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P.V.

# TRANSCRIPT OF RECORD

## Supreme Court of the United States

OCTOBER TERM, 1940

No. 1

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HARRY BRIDGES, PETITIONER,

*vs.*

STATE OF CALIFORNIA

---

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

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PETITION FOR CERTIORARI FILED FEBRUARY 24, 1940.

CERTIORARI GRANTED APRIL 8, 1940.

# SUPREME COURT OF THE UNITED STATES

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**IN SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES**

In the Matter of H. R. BRIDGES, Sometimes Known as HARRY R. BRIDGES, In Contempt

AFFIDAVIT OF J. LOUIS ELKINS

STATE OF CALIFORNIA,
County of Los Angeles, ss:

J. Louis Elkins, being by me first duly sworn, deposes and says:

* * * * * * *

[fol. 41] Second Count

That he is the Executive Secretary of Los Angeles Bar Association;

That on or about the 18th day of September, 1937, an action was commenced in the above entitled court by the filing of a complaint and the issuance of a summons entitled [fol. 42] "P. W. Walker, et al., plaintiffs, vs. International Longshoremen's Association—Local 38-82, Inc., a corporation, et al., defendants," which said action is known as action number 420356 in said court.

That said action was tried in the above entitled court before the Honorable Ruben S. Schmidt, Judge thereof, and on the 21st day of January, 1938, the said Ruben S. Schmidt, as Judge of said Court, made, signed and filed his Findings of Fact and Conclusions of Law in said action, a copy of which said Findings of Fact and Conclusions of Law, with the amendments thereto and deletions therefrom made subsequent to the date of the signing and filing of said Findings of Fact and Conclusions of Law, is attached hereto and marked Exhibit "A".

That the nature of the controversy involved in said action and the relief adjudged to the parties thereto will appear from said Findings of Fact and Conclusions of Law.

The pendency of said action No. 420,356, at the date of the publication of the contents of the telegram as herein-

after set forth, will appear from the affidavit of L. E. Lampton, subscribed and sworn to by him on the 24th day of February, 1938, and filed herein concurrently herewith, hereby referred to for particulars.

That for several months last past since the filing of said [fol. 43] action as aforesaid, the existence thereof and the controversy involved therein has received wide and general publicity in the Pacific Coast states of the United States of America. That almost daily for several months last past news items respecting the controversy involved in said action and conditions in the maritime industry on the Pacific Coast as a result of said controversy have appeared in the daily newspapers published and circulated in the City of Los Angeles and in other cities in the County of Los Angeles, and the existence of said controversy and the fact that said controversy was pending in the courts for determination has been a matter of great public interest and general public discussion.

That the making, filing and pendency of the motion for a new trial and the motion to vacate the judgment and decision in said action also have been since the filing thereof and now are matters of public knowledge and interest.

That, as will appear from said Findings of Fact and Conclusions of Law, said action involved a controversy between maritime workers, some of whom are affiliated with the American Federation of Labor and some of whom are affiliated with the Committee for Industrial Organization and many of whom at the commencement of said action were and some of whom now are members of International [fol. 44] Longshoremen's Association Local 38-82, Inc., a corporation.

Affiant is informed and believes and on such information and belief alleges that on the 24th day of January, 1938, the said H. R. Bridges dispatched a telegraphic message to Frances Perkins, Secretary of Labor in the Cabinet of the President of the United States at Washington, D. C., which said telegram contained words and figures as follows, to-wit:

"This decision is outrageous considering I. L. A. has 15 members (in San Pedro) and the International Longshoremen-Warehousemen's Union has 3000. International Longshoremen-Warehousemen Union has petitioned the labor board for certification to represent San Pedro longshore-

men with International Longshoremen Association denied representation because it represents only 15 men. Board hearing held; decision now pending. Attempted enforcement of Schmidt decision will tie up port of Los Angeles and involve entire Pacific Coast. International Longshoremen-Warehousemen Union, representing over 11,000 of the 12,000 longshoremen on the Pacific Coast, does not intend [fol. 45] to allow state courts to override the majority vote of members in choosing its officers and representatives and to override the National Labor Relations Board."

That affiant is informed and believes and upon such information and belief alleges that said H. R. Bridges on said 24th day of January, 1938, at or about the time of the sending of said telegram to said Frances Perkins, caused a copy thereof to be given to James D. O'Neil for the purpose and with the intent that the contents of said telegram should and would be furnished to and published in newspapers on the Pacific Coast and elsewhere.

Affiant is informed and believes and upon such information and belief alleges that said James D. O'Neil, acting as such publicity agent for said International Longshoremen's and Warehousemen's Union District No. 1, and pursuant to the express instructions of said H. R. Bridges and with his consent, gave said telegram to a newspaper reporter, or newspaper reporters, the name or names of whom are unknown to affiant.

That on or about the 24th and 25th days of January, 1938, excerpts from said telegram which are hereinabove set forth were published in newspapers of wide and general circulation in the cities of San Francisco and Los Angeles [fol. 46] in the State of California, and the sending of said telegram and the contents thereof were thus made public and received wide and general publicity in the County of Los Angeles and elsewhere, all as is more particularly set forth in the affidavit of Charles E. Sharritt, subscribed and sworn to by him on the 24th day of February, 1938, and filed herein contemporaneously herewith. Reference to which said affidavit is hereby made for further particulars.

Affiant is informed and believes and on such information and belief alleges that the contents of said telegram, as hereinabove set forth, were put in the course of publication by said H. R. Bridges for the purpose of bringing the same to the personal attention of and influencing the said Ruben

S. Schmidt to make an order granting a new trial in said action, or to vacate said judgment and decision and discharge said receiver or vacate said permanent injunction theretofore made and entered in said action.

That the statements contained in said telegram and the publication of the fact of sending said telegram and the publication of the contents thereof as aforesaid were in and of themselves calculated and had an inherent tendency to:

(1) Interfere with, influence, sway and control the proceedings in said action No. 420356, and interfere with, sway, control, embarrass and influence the actions and decisions [fols. 47-50] of said Ruben S. Schmidt, acting as a judge of said Superior Court;

(2) Interfere with the orderly and due administration of justice in said action;

(3) Bring about and cause the vacation of the judgment theretofore made by said Ruben S. Schmidt and the appointment of a receiver for said International Longshoremen's Association, Local 38-82, Inc., a corporation, provided for in said judgment, and a vacation of the permanent injunction theretofore rendered and entered in said action, and to cause said judge to grant a new trial in said action, or to modify said judgment, or said permanent injunction.

* * * * * * *

[fol. 51] J. Louis Elkins.

Subscribed and sworn to before me this 24th day of February, 1938. Ernestine Stahlhut, Notary Public in and for the County of Los Angeles, State of California. (Seal.)

---

[fol. 52] In Superior Court of the State of California in and for the County of Los Angeles

In the Matter of H. R. Bridges, Sometimes Known as Harry R. Bridges, in Contempt

Affidavit of L. E. Lampton, County Clerk

State of California,
County of Los Angeles, ss:

L. E. Lampton, being by me first duly sworn, deposes and says: That he is now and at all times herein mentioned was

the duly appointed, qualified and acting County Clerk of the County of Los Angeles, State of California, and ex-officio clerk of the Superior Court of the State of California in and for the County of Los Angeles.

That Ruben S. Schmidt is now and at all times herein mentioned has been a duly elected, qualified and acting judge of the Superior Court of the State of California in and for the County of Los Angeles.

That on the 18th day of September, 1937, an action was commenced in the above entitled court by the filing of a complaint and the issuance of a summons entitled "P. W. Walker, et al., plaintiffs vs. International Longshoremen's Association—Local No. 38-82, Inc., a corporation, et al., defendants," which action is known as No. 420356 in said court.

That in and by said action was sought an injunction, an accounting, the appointment of a receiver and other equita-
[fol. 53] ble relief.

That on the 28th day of September, 1937, an answer to plaintiffs' complaint was filed in said action by the defendants International Longshoremen's Association, Local 38-82, Inc., a corporation, Roy M. Donnelly, as President thereof, Francis G. Fetzer, as Secretary Treasurer thereof, and Tom Provence, Joe Simons, C. W. Hanson, C. S. Pugh, A. Lindman, A. W. Springer, W. S. Lawrence, H. C. Viethaus, R. Reedy, Dan Kelly, Roy M. Donnelly and Francis G. Fetzer, as members of the Board of Directors of said corporation, and on said date a cross-complaint was filed therein by International Longshoremen's Association, Local 38-82, Inc., a corporation, against all of the plaintiffs in said action. That thereafter said action was set for trial and came on regularly for hearing and was tried before the Honorable Ruben S. Schmidt as Judge of said Superior Court, sitting in Department No. 4 thereof.

That thereafter, to-wit, on the 8th day of December, 1937, the said Ruben S. Schmidt, as Judge of said court, ordered judgment for plaintiffs and ordered that a receiver be appointed for said International Longshoremen's Association, Local 38-82, Inc., a corporation, and that a permanent injunction issue as prayed for in plaintiffs' complaint, and ordered judgment for the defendants and cross-complainants decreeing that said corporation had the right and power to amend its articles of incorporation by complying
[fol. 54] with the provisions of Section 362, 362-a and 362-b

of the Civil Code of the State of California for any or all of the purposes provided in Section 362 of said Civil Code.

That thereafter, to wit, on the 21st day of January, 1938, the said Ruben S. Schmidt, as Judge of said Court, made and filed his findings of fact and conclusions of law, and made and filed a judgment in said action, and made and filed a permanent injunction therein, in and by the terms of which said judgment a receiver was appointed for said International Longshoremen's Association, Local 38-82, Inc., a corporation, and on said date, to wit, the 21st day of January, 1938, the receiver so appointed by said judgment, to wit, Will Hays, qualified by filing the bond required by said judgment to be filed by him and by making and filing his oath as such receiver. That on the 22nd day of January, 1938, an order was made and entered in said action by said Ruben S. Schmidt staying the execution of said judgment and said injunction to January 29, 1938, which said order was filed on January 24, 1938. That said judgment and said permanent injunction were entered by the Clerk of this court on the 24th day of January, 1938, in Judgment Book 986, pages 341 and 345, respectively, in the office of said County Clerk, copies of which said judgment and said permanent injunction are annexed hereto and marked Exhibits "A" and "B" respectively.

[fol. 55] That on the 25th day of January, 1938, notice of the entry of said judgment was served upon defendants' counsel and said notice of entry of judgment was filed in said action on the 27th day of January, 1938.

That on the 24th day of January, 1938, all the defendants in said action against whom said judgment had been rendered and said permanent injunction issued, served a notice of intention to move for a new trial and a notice of motion to vacate the judgment and decision in said cause in whole, and said notice of intention was filed on January 26, 1938.

That on the 27th day of January, 1938, there was filed in said action a stipulation executed by counsel for the respective parties extending the stay of execution of said judgment, said order and said permanent injunction to February 2, 1938, and based on said stipulation, said Ruben S. Schmidt made an order staying the execution of said judgment, order and permanent injunction to said date.

That on the 29th day of January, 1938, said motion for a new trial and said motion to vacate said judgment and decision came on for hearing before the said Honorable

Ruben S. Schmidt, sitting in Department No. 28 of the above entitled court as Judge thereof, and on said 29th day of January, 1938, the hearing of said motion for a new trial and said motion to vacate said judgment and decision was continued to February 2, 1938.

[fol. 56] That on said February 2, 1938, the hearing of said motion for a new trial and said motion to vacate said judgment and decision commenced before the said Honorable Ruben S. Schmidt, sitting in Department No. 28 of the above entitled court as Judge thereof, and hearings thereof were held before said Judge each court day thereafter to and including the 4th day of February, 1938, upon which said date said motions were taken under submission by said Judge and, as of the date of this affidavit, said motions remain undecided by said Judge and said case is still pending in the above entitled court.

L. E. Lampton.

Subscribed and sworn to before me this 24 day of February, 1938. Ernestine Stahlhut, Notary Public in and for the County of Los Angeles, State of California. (Seal.)

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[fol. 57] EXHIBIT "A" TO AFFIDAVIT

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES

No. 420356

P. W. WALKER, R. A. PATTERSON, C. H. LINDEGREN, M. D. Rodgers, Elmer Bruce, O. M. Benton, A. L. Bebo, W. J. Hull, A. H. Peterson, Jack Eduardson, C. E. Caldwell, Lyle Young, J. W. Bowley, Joe Sumption and J. W. Cobo, Plaintiffs,

—

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL No. 38-82, INC., a Corporation; Roy M. Donnelly, as President Thereof; Francis G. Fetzer, as Secretary-Treasurer Thereof, and Tom Provence, Joe Simons, C. W. Hanson, B. Franklin, C. B. Pugh, A. Lindman, L. Young, A. W. Springer, W. S. Lawrence, M. A. Anderson, V. Black, George Murphy, Tom Parker, H. C. Viefhaus, R. Reedy,

Dan Kelly, E. L. Bowen, Roy M. Donnelly, Francis G. Fetzer, as the Board of Directors of Said Corporation, Defendants

PERMANENT INJUNCTION

This cause having been regularly called and tried by the court, and the findings of fact and conclusions of law, and the decision thereon in writing, having been rendered, wherein judgment was ordered in favor of plaintiffs, and against defendants and for costs, on motion of attorneys for plaintiffs:

It is Ordered Adjudged and Decreed, that the said defendants, International Longshoremen's Association—Local No. 38-82, Inc., a corporation, Roy M. Donnelly, as President thereof, Francis G. Fetzer, as Secretary-Treasurer thereof, and Tom Provence, Joe Simons, C. W. Hanson, C. S. Pugh, A. Lindman, A. W. Springer, W. S. Lawrence, [fol. 58] H. C. Viefhaus, R. Reedy, Dan Kelly, Roy M. Donnelly and Francis G. Fetzer, as members of the Board of Directors of said corporation, their agents, servants, employees, counselors, attorneys, solicitors, and all other persons acting in aid or assistance of them and each of them, be and they are each and all of them hereby permanently restrained and enjoined from attempting to secure a charter and from attempting to have any kind of affiliation with the Committee for Industrial Organization, or with the Committee for Industrial Organization, Pacific Coast District, or with the International Longshoremen's & Warehousemen's Union, or with the Committee for Industrial Organization, Industrial Council of Los Angeles, or from authorizing and making expenditures to or on behalf of the said Committee for Industrial Organization or to or on behalf of the said Committee for Industrial Organization, Pacific Coast District, or to or on behalf of the said International Longshoremen's & Warehousemen's Union, or to or on behalf of the Committee for Industrial Organization, Industrial Council of Los Angeles, or to or on behalf of Don Cox, Elmer Mevert and J. D. Thomas, organizers for the Committee for Industrial Organization, or from attempting to affiliate with or join or accept a charter from the said Committee for Industrial Organization, or from the Committee for Industrial Organization, Pacific Coast District, or from the said International Longshoremen's & Warehouse-[fol. 59] men's Union, or from the Committee for Industrial

Organization, Industrial Council of Los Angeles, or paying or distributing any of the property or assets or funds of the International Longshoremen's Association, Local No. 38-82, Inc., a corporation to the Committee for Industrial Organization or to the Committee for Industrial Organization, Pacific Coast District, or to the International Longshoremen's & Warehousemen's Union, or to the Committee for Industrial Organization, Industrial Council of Los Angeles; and so long as said individual defendants and/or each of them remain members and/or officers and/or directors of said International Longshoremen's Association, Local No. 38-82, Inc., they and each of them are permanently restrained from organizing or attempting to organize any new union of longshoremen within Los Angeles Harbor or Long Beach Harbor or attempting to operate any meeting hall or any hiring hall for any new union of longshoremen; or from attempting to perform any of the functions now performed by the International Longshoremen's Association, Local 38-82, Inc. in or through any new union or organization; or from attempting to organize any new union, or from using any of the property and/or funds of said International Longshoremen's Association, Local No. 38-82, Inc., for any of the purposes against which they are by this injunction restrained.

The foregoing injunction is subject to the right and power [fol. 60] of the cross-complainant to amend its Articles of Incorporation by complying with the provisions of Sections 362, 362a and 362b of the Civil Code of the State of California, and may amend its Articles of Incorporation for any or all of the purposes provided by Section 362 of the Civil Code of the State of California.

Dated at Los Angeles, California, this 21st day of January, 1938.

Ruben S. Schmidt, Judge.

[fol. 61] EXHIBIT "B" TO AFFIDAVIT

In the Supreme Court of the State of California in and for the County of Los Angeles

No. 420356

P. W. WALKER, et al., Plaintiffs,

vs.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION—LOCAL NO. 38-82, INC., a Corporation, et al., Defendants

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above-entitled cause came on regularly for trial on the 1st and 2nd days of November, 1937 and the 2nd, 6th, 7th and 8th days of December, 1937, in the above-entitled Court, in Department 4 thereof, the Honorable Ruben S. Schmidt, Judge presiding, without a jury, a jury trial having been expressly waived by the parties hereto, the plaintiffs appearing by their attorneys, Aaron Sapiro and Samuel De Groot, Esqs., and the defendants, International Longshoremen's Association, Local No. 38-82, Inc., a corporation, Roy M. Donnelly, as President thereof, Francis G. Fetzer, as Secretary-Treasurer thereof, and Tom Provence, Joe Simons, C. W. Hanson, C. S. Pugh, A. Lindman, A. W. Springer, W. S. Lawrence, H. C. Viefhaus, R. Reedy, Dan Kelly Roy M. Donnelly and Francis G. Fetzer, as members of the Board of Directors of said International Longshoremen's Association, Local No. 38-82, Inc. appearing by their attorneys, John C. Packard and Charles J. Katz, Esqs. [fol. 62] Whereupon evidence both oral and documentary was introduced and after deliberating therein the Court makes its Findings of Fact and draws its Conclusions of Law therefrom, as follows:

Findings of Fact

I

That plaintiffs are and at all times herein mentioned have been members in good standing of the defendant corporation, International Longshoremen's Association, Local No. 38-82, Inc., a non-profit membership corporation, organized under the provisions of Article I, Title 12 of the Civil Code

of the State of California; and that the membership of the said corporation is composed of a large number of persons in excess of one thousand persons; and that these plaintiffs bring this action for and on behalf of themselves and as members of said corporation here suing in a representative capacity.

II

That it is true that defendant, International Longshoremen's Association, Local No. 38-82, Inc., is and for more than two years last past has been a non-profit corporation, formed under the provisions of Article I, of Title 12, of the Civil Code of the State of California, for the general purpose of conducting the usual activities of a labor union for and on behalf of longshoremen in the harbors of Los Angeles and Long Beach; and further that the office of the corporation is located at San Pedro, in the County of Los Angeles, [fol. 63] and that the residence of all of the said individual defendants is in the County of Los Angeles; and that said corporation is usually referred to as I. L. A. Local 38-82, and will be so referred to in these findings; that the defendant Roy M. Donnelly is, and during all the times herein mentioned has been President of the I. L. A., Local 38-82; that the defendant Francis G. Fetzer is, and during all the times herein-mentioned has been Secretary Treasurer of the I. L. A., Local 38-82; that the defendants Tom Provence, Joe Simons, C. W. Hanson, B. Franklin, C. S. Pugh, A. Lindman, L. Young, A. W. Springer, W. A. Lawrence, M. A. Anderson, V. Black, George Murphy, Tom Parker, H. C. Viefhaus, R. Reedy, Dan Kelly, H. L. Bowen, Roy M. Donnelly and Francis F. Fetzer are, and during all the times herein mentioned have been members of the Board of Directors of the I. L. A., Local No. 38-82.

III

That it is true that the I. L. A., Local 38-82, has been operating as a labor union under a charter granted to it by the International Longshoremen's Association, an unincorporated association, with its office at New York City, New York, affiliated with the American Federation of Labor; and the *the* I. L. A., Local 38-82, has filed Articles of Incorporation with the office of the Secretary of State of California, and that, among other things, said Articles of Incorporation set out the purposes for which the said corporation, Inter-

[fol. 64] national Longshoremen's Association, Local No. 38-82, Inc., has been formed, and that among such purposes are:

"* * * Second * * * 5. To conduct collective bargaining, either singly or jointly, with any other local union of the American Federation of Labor * * *."

"7. To do any and all lawful things and acts necessary or proper to effect the purpose of and to maintain the charter of the International Longshoremen's Association—Local No. 38-82, received from the American Federation of Labor * * *";

That it is true that all of the corporate activities of the said defendant corporation are limited to the purposes as are expressly set out in said subparagraph (5) and subparagraph (7) of said Article Second hereinabove in this numbered paragraph quoted. That it is true that at the time of the filing of the complaint herein said Articles of Incorporation had not been amended. This Court makes no Finding upon the question of whether any steps or proceedings have been taken to amend said Articles of Incorporation, or as to the validity or invalidity of any of said steps or proceedings had or taken under Sections 362, 362a and 362b of the Civil Code of the State of California, either prior to, or since the filing of the original complaint herein because this Court has considered and has restricted the issue as to [fol. 65] amendment to the sole question as to the power of the said defendant corporation to amend said Articles of Incorporation.

IV

That it is true that the said defendant officers and directors of the corporation have already taken action, and threaten to take further action, contrary to the said provisions of the Articles of Incorporation, and in direct violation thereof, in that (a) the said officers and Board of Directors have taken action, and threaten to take further action to cause the said I. L. A., Local No. 38-82 to become affiliated with the International Longshoremen's & Warehousemen's Union, for the purpose of conducting collective bargaining, and otherwise; and further, said defendant officers and Board of Directors have taken action, and threaten to take further action, to cause the said I. L. A., Local No. 38-82, to become affiliated with the Committee for Indus-

trial Organization; and further, the said defendant officers and Board of Directors have taken action, and threaten to take further action to have the I. L. A., Local No. 38-82,

affiliate with

[apply for, and receive, and accept a charter from][*] the Committee for Industrial Organization, commonly known as the C. I. O., and hereinafter referred to as the C. I. O.; and further, said defendant officers and Board of Directors have taken action, and threaten to take further action, to cause the said I. L. A., Local No. 38-82, to apply for a char-
[fol. 66] ter from and through the said International Longshoremen's & Warehousemen's Union; and further, said defendant officers and Board of Directors have failed to maintain and continue the payment of per capita charges to the International Longshoremen's Association of the Pacific Coast District No. 38, or nationally, as required by the charter and by the Constitution and By-Laws of the International Longshoremen's Association, and of the International Longshoremen's Association, Pacific Coast District No. 38 and of the I. L. A. Local 38-82; and it is true that the defendants have failed and threaten to continue to fail to maintain the charter of the I. L. A., Local No. 38-82, Inc.

V

That it is true that the International Longshoremen's & Warehousemen's Union, is a union recently organized on the Pacific Coast, under the direction of the C. I. O., and under the presidency of one Harry Bridges, former President of the International Longshoremen's Association, Pacific Coast District No. 38; that the said International Longshoremen's & Warehousemen's Union is usually referred to as the I. L. W. U., and will be so referred to in these findings; that the said I. L. W. U. is not affiliated with the American Federation of Labor in any respect, and that the I. L. W. U. is directly and publicly opposed to the American Federation of Labor, and to the organizations affiliated with the American Federation of Labor.

[fol. 67] VI

That it is true that the Committee for Industrial Organization is an unincorporated organization of representa-

[*] Matter enclosed in brackets stricken in copy.

tives of various labor unions, [most of which were at one time affiliated with the American Federation of Labor, and have deliberately broken away therefrom; and that the said C. I. O. has a Coast organization, of vague character, of which the said Harry Bridges is the Pacific Coast Director; and that the said C. I. O. organizes labor unions in opposition to the American Federation of Labor; maintains a constant public hostility against the American Federation of Labor; engages organizers, publicity men, labor agents and others to attempt to persuade existing labor unions to break their affiliation with the American Federation of Labor and join the said C. I. O.; and that the said C. I. O. maintains a Labor Council in the County of Los Angeles separate and distinct from the Labor Council of Los Angeles, formed and maintained by unions affiliated with the American Federation of Labor; and that the said C. I. O., in its national operations, in its Pacific Coast operations, in its Los Angeles County operations, in its operations as a C. I. O. Industrial Council of Los Angeles, and in its operations as the I. L. W. U.,]* and is openly and notoriously hostile to the American Federation of Labor, and antagonistic to the organizations that are still affiliated with the American Federation of Labor.

[fol. 68] VII

That it is true that the said defendant officers and Board of Directors have, on September 3, 1937, at a regular meeting, taken steps to apply for an I. L. W. U. charter, and have taken steps to arrange to pay the regular per capita tax to the I. L. W. U. and to the C. I. O. organizations; have already a have begun and [threaten to]* secure the said charter and to operate under the said I. L. W. U. and under the said C. I. O.; and that all of said actions constitute an express violation of the said Section 5 and Section 7 of Paragraph Second of the Articles of Incorporation of the I. L. A., Local No. 38-82; and further, that the said defendant officers and said directors have actually made payments in money, contrary to law, and in violation of the said provisions of the Articles of Incorporation, in that on or about September 4, 1937, a payment of Two Hundred and Fifty Dollars ($250.00) was sent by the said Francis G. Fetzer and the said Roy M.

* Matter enclosed in brackets stricken in copy.

Donnelly to the I. L. W. U. as a per capita tax, together with the application for the said I. L. W. U. charter; and further, that several checks have been sent and money has been paid to the said C. I. O. Industrial Council of Los Angeles County, including, among others, a check in the amount of Two Hundred and Fifty Dollars ($250.00) as a per capita tax, on or about August 20, 1937; and further, that during May, 1937, a check in the amount of Five Hundred Dollars ($500.00) was paid over to certain motion picture groups by the said Fetzer and the said Donnelly, for [fol. 69] the purpose of enabling the said motion picture groups to develop a C. I. O. organization movement in the motion picture industry; [and further, that at the time the said check was drawn, the said Fetzer openly stated, in the presence of many of the plaintiffs, that the money represented by the said check was being withdrawn illegally, but that he and Donnelly were going to send the money on to these motion picture crafts anyway;]* and further, that the said officers and Board of Directors have been authorizing payment, and have been paying to Don Cox and Elmer Mevert and John D. Thomas the amount of Sixty-three Dollars ($63.00) per week for each of them, as salary for work as C. I. O. organizers in Los Angeles County, under the direction and authority and action of the said officers and Board of Directors.

## VIII

That it is true that said actions are illegal and constitute the doing of illegal actions, and the waste and use of such funds of the corporation for purposes contrary to the purposes set out in the said Articles of Incorporation of I. L. A., Local 28-82; and that said moves and actions to affiliate with the said I. L. W. U., and the said C. I. O., and the said C. I. O. Council, are all of them expressly in violation of the purposes set out in the Articles of Incorporation of the I. L. A., Local 38-82, particularly Section 7, where the express purpose is set out: "to do any and all lawful things and acts necessary or proper * * * to maintain [fol. 70] the charter of the I. L. A., Local No. 38-82, received from the American Federation of Labor * * * as a component labor union." That it is true that the said defendant officers and Board of Directors have deliberately acted

* Matter enclosed in brackets stricken in copy.

to refuse and fail to pay to the International Longshoremen's Association, Pacific Coast Branch No. 38 and the International Longshoremen's Association at New York, the per capita taxes which the said defendant, I. L. A., Local No. 38-82, is and has been obligated to pay; and that said failure and refusal to pay the said per capita tax has been adopted as a particular policy and action by the said defendant officers and directors for the express purpose of attempting to make the I. L. A. officials cancel or annul the said charter for failure to pay the per capita taxes, as required by the rules and law of the International Longeshoremen's Association; and that said failure and refusal to pay such per capita taxes, and that the adoption of said deliberate policy and the deliberate refusal and failure to pay, are in express violation of the provisions of the said Paragraph 7 of the purposes of the said corporation, in that it is a deliberate failure to do a thing necessary for the purpose of maintaining the charter of the I. L. A., Local 38-82, in the American Federation of Labor.

IX

That it is true that the said defendant, Donnelly, President, is a paid officer of the said corporation; that the said defendant, Fetzer, Secretary-Treasurer, is a paid officer of [fol. 71] the corporation; that the said defendants, Reedy and Simons, business agents, are paid officers of the corporation; and that the said defendants Pugh, Viefhaus and Hanson, dispatchers, are paid officers of the corporation, and that all of the said paid officers, [

]* have actually voted and taken specific steps to carry out these various activities, contrary to and in violation of the express provisions of Section 5 and Section 7, of Paragraph Second, of the Articles of Incorporation, hereinabove set forth.

X

That it is true that the defendant, I. L. A., Local 38-82, did, on or about May 25, 1935, legally adopt a set of by-laws. That it is true that the by-laws of the said I. L. A., Local No. 38-82, contain the following provision:

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* Matter enclosed in brackets stricken in copy.

"The Local shall never dissolve nor shall the funds of the Local be divided as long as ten members in good standing on the books object":

and this provision is similar to a provision in the Constitution of the International Longshoremen's Union, which states, under the head of "Rules for Locals":

"Rule 5. A local cannot withdraw from the International, or dissolve, as long as ten members in good standing object thereto":

and that the said Rule 5 is obligatory upon all Locals to [fol. 72] which charters have been issued and granted by the said International Longshoremen's Association; and that the plaintiffs are all members in good standing in the said I. L. A., Local No. 38-82; and that the plaintiffs have always abided by the charter and the Articles of Incorporation and the By-Laws of the said corporation; and that the said plaintiffs constitute more than ten members in good standing; and that the said plaintiffs have always maintained / and desire to maintain the charter of the I. L. A., Local 38-82 received from the American Federation of Labor.

XI

That it is true that the corporation has substantial assets approximating Fifty Thousand Dollars ($50,000.00) in value; and that the I. L. A., Local No. 38-82, had a gross income / prior to September, 1937 [at the present time]* of approximately Eight Thousand Dollars ($8,000.00) per month, and that most of the said funds are required for the operation of the I. L. A. Hall and the hiring hall and for the various other matters maintained by the I. L. A., Local 38-82, and that the funds on hand are being wasted by the said improper expenditures by the said defendant Officers and Board of Directors, and that the assets of the corporation are being dissipated, spent, consumed and used by such actions of the officers and Board of Directors improperly and illegally, without benefit to the corporation, and in violation of the Articles of Incorporation of

* Matter enclosed in brackets stricken in copy.

the said corporation. That it is true that if the said officers [fol. 73] and Board of Directors are not restrained from making such expenditures and continuing such expenditures, the income of the said corporation will not be sufficient to enable the corporation to carry on its proper activities for its members, and will result in a state of insolvency.

XII

That it is true that there is no manner of redress within the said defendant I. L. A., Local 38-82, Inc. for the plaintiffs or any of them, and that no remedy within the defendant corporation is provided by the Articles of Incorporation or by its Constitution and By-Laws, to enable the plaintiffs to stop the several actions or any of them hereinbefore described, within the defendant corporation.

XIII

That it is true that the defendant officers and the Board of Directors of I. L. A., Local 38-82, have deprived and are depriving the said plaintiffs and other members of the I. L. A., Local 38-82, of the rights and privileges to which they are entitled under their charter and under the Articles of Incorporation of the I. L. A., Local 38-82, and that the right of membership in the American Federation of Labor is an old and cherished right and privilege among American workmen; and that this right and privilege is one of the things which the officers and Board of Directors of the I. L. A., Local 38-82, were bound to maintain under the Articles [fol. 74] of Incorporation of said I. L. A., Local 38-82; and that the deprivation of these rights and other rights as a result of the said illegal and improper acts, has continued and is continuing. That it is true that if adequate redress is not immediately secured the rights which said plaintiffs and the other members of the said I. L. A., Local 38-82, have enjoyed will be entirely destroyed, and the plaintiffs and the other members of I. L. A., Local 38-82 will thereby be illegally deprived of important rights and privileges, [and will be prevented from the continuation of co-ordinated action and unified action with the other longshoremen and maritime workers of the Pacific Coast, and will be greatly weakened in the expression of all of their rights as .ork-ers],* and will lose valuable property rights by reason of

* Matter enclosed in brackets stricken in copy.

these illegal actions of the officers and Board of Directors of I. L. A., Local 38-82.

XIV

That it is true that said illegal acts as aforesaid by the defendants, the officers and Board of Directors of the I. L. A., Local 38-82, Inc., the plaintiffs and all members of the said I. L. A., Local 38-82, Inc. will suffer and will continue to suffer irreparable injury; and that no part of such injury can be paid for or compensated in money damages; and that substantial loss and irreparable loss and injury will follow.

XV

That it is true that plaintiffs have brought this action in [fol. 75] their representative capacity; and that they have been obliged to engage counsel and have become obligated therefore that no personal profit will come to any of the plaintiffs by reason of this action except the great profit and advantage which will come to them, and each of them, as members of the I. L. A., Local 38-82, Inc., by the protection of their charter and their Articles of Incorporation.

XVI

That it is true that the defendant members of the Board of Directors and officers have been guilty of gross mismanagement of the affairs of the said defendant corporation, I. L. A., Local 38-82, Inc. [* * * ]* and it is true that the plaintiffs are entitled to an accounting from the said defendant officers and Board of Directors for all funds heretofore expended by them or on their order in violation of their duties as officers and members of the Board of Directors of said defendant corporation, I. L. A., 38-82, Inc.

XVII

That it is true that the said defendant officers and directors of the defendant corporation, I. L. A., Local 38-82, Inc. have set up and opened a new office for the I. L. W. U.; that said defendant officers and directors have caused to be transferred to the said I. L. W. U. the ordinary activities of the said I. L. A., Local 38-82, Inc. in reference to the opera- [fol. 76] tion of the I. L. A. hall, and participating in the

* Matter enclosed in brackets stricken in copy.

operation of a hiring hall and that the said officers and directors have caused the said I. L. A., Local 38-82, Inc. to abandon and cease its operations and functions as an I. L. A. hall; and that the said I. L. A., Local 38-82, Inc. is not now operating or participating in the operation of a hiring hall or sending men out to work under the working agreements with the employers of the defendant corporation, I. L. A., Local 38-82, Inc., or otherwise.

XVIII

That it is true that the said officers and directors have caused the said I. L. A., Local 38-82, Inc. to cease collecting dues or funds from the members thereof and have caused the income of the said I. L. A., Local 38-82, Inc. to stop completely, since September 3, 1937.

XIX

That it is true that the said officers and directors have caused the actual premises occupied by the said I. L. A., Local 38-82, Inc. to be practically abandoned, and that the dispatchers, stenographers, office help and others who were formerly busy with the business of the said I. L. A., Local 38-82, Inc. at the office and premises of the corporation I. L. A., Local 38-82, Inc., are no longer present at the said premises and have not been present at the said premises since from on or about October 15, 1937; and that, by reason of the action of the said officers and directors, the said premises now constitute a hall, wherein men may look in and move about, but where no business whatsoever is conducted and where no functions or business of the said I. L. A., [fol. 77] Local 38-82, Inc. is now being performed; and where no functions of the hiring and dispatching of men for employment are now being carried on; and where no functions of the corporations, such as the collection of dues and the conservation of funds are now being carried on; and that the said premises of the I. L. A., Local 38-82, Inc. are actually and completely abandoned as far as any operations or activities of the said corporation, I. L. A., Local 38-82, are concerned.

XX

That it is true that since the filing of the said complaint the said officers and directors attempted to cause the shipowners and others, employers of members of the said I. L.

A., Local 38-82, Inc. to recognize the said I. L. W. U. as the representative of the employees under the working contracts of the said I. L. A.; and that the working contracts stand in the name of the I. L. A., Pacific Coast District No. 38, for and on behalf of the locals of the I. L. A.; and that the said officers and directors are still making various attempts to cause the control and administration of the said working contracts to be transferred or taken over by the said I. L. W. U.

XXI

That it is true the said officers and directors have caused the members of the said I. L. A., Local 38-82, Inc. to take action to accept a charter from the said I. L. W. U. and to [fol. 78] set up a local union of the said I. L. W. U. at San Pedro, and to take over into the said union the ordinary activities of the said I. L. A., Local 38-82, Inc.

XXII

That it is true the Articles of Incorporation attached to defendants' answer, marked "Exhibit A" is a true and correct copy of the Articles of Incorporation of said defendant, I. L. A., Local 38-82, Inc.

XXIII

That it is true the defendant, I. L. A., Local 38-82, Inc. has been operating as a labor union under a charter granted to it by the I. L. A., an unincorporated association affiliated with the American Federation of Labor; that said charter was originally granted by the I. L. A., an unincorporated association, to the I. L. A., Local 38-82, an unincorporated association, which unincorporated association was succeeded by the defendant corporation, I. L. A., Local 38-82, Inc., which corporation was formed for the purpose of incorporating the I. L. A., Local 38-82, an unincorporated association, pursuant to the laws of the State of California and particularly Section 594 of the Civil Code of the State of California; that it is not true the defendant corporation, I. L. A., Local 38-82, Inc. carries on its business as a labor union independent of any charter from said I. L. A., an unincorporated association.

XXIV

That it is not true the said Articles of Incorporation of [fol. 79] the defendant I. L. A., Local 38-82, Inc. have ever

been amended, and in this connection it is not true the alleged amendment set forth in Paragraph III of defendants' answer, commencing on page three, line sixteen, continuing through to line twenty-nine, was ever adopted by the defendant corporation, I. L. A., Local 38-82, Inc. or the members thereof.

XXV

That it is not true the defendants, as officers and as members of the Board of Directors of the defendant corporation, I. L. A., Local 38-82, Inc., pursuant to instructions, directions and resolutions of the overwhelming majority or of any of the members of the defendant corporation, are seeking affiliation with the I. L. W. U., but that said action was taken by the defendant officers and members of the Board of Directors of the defendant corporation by their own volition and not by the vote of the members of the defendant corporation in any legal membership meeting; that such action on the part of the defendant officers and members of the Board of Directors in seeking such affiliation was illegal and contrary and in violation of a temporary restraining order and an injunction pendente lite issued out of this Court in this case, and in violation of the Articles of Incorporation of defendant corporation.

XXVI

That it is not true that each and every payment of money made by the defendants was made pursuant to the direction [fol. 80] and with the full knowledge and consent of the overwhelming majority or any majority of the members of the defendant corporation.

XXVII

That it is not true the defendants have failed to pay the per capita tax to the I. L. A. pursuant to the direction of the majority of the members of the defendant corporation.

XXVIII

That it is not true every expenditure described in plaintiffs' complaint has been expressly ratified by, and consented to, by the vote of the overwhelming majority or any other majority of the members of the defendant corporation; and that in making such expenditures and each of them, the

defendants did act in accordance with the express desire and direction of the overwhelming or any other majority of the members of the defendant corporation; but it is true that the making of any expenditures was illegal and void.

XXIX

That it is not true the acts complained of by the plaintiffs of the defendant officers and members of the Board of Directors of the defendant corporation, I. L. A., Local 38-82, Inc., were expressly consented to by the vote of the majority of the members of the defendant corporation.

[fol. 81]

XXX

That it is true an actual controversy exists between the plaintiffs and cross-defendants and the defendant and cross-complainant, I. L. A., Local 38-82, Inc. under said Articles of Incorporation of the defendant corporation, I. L. A., Local 38-82, Inc., and that said defendant and cross-complainant desires a declaration of its rights or duties with respect to subparagraphs 5 and 7 of Article 2nd of said Articles of Incorporation.

XXXI

That it is true the said defendant and cross-complainant may amend its Articles of Incorporation in accordance with the laws of the State of California pursuant to "Amendment of Articles" as provided in the Civil Code of the State of California, and the by-laws and Constitution of the said defendant and cross-complainant, I. L. A., Local 38-82, Inc.

Conclusions of Law

From the foregoing Findings of Fact the Court makes the following conclusions:

I

That the actions of the defendant officers and the Board of Directors of the defendant corporation, International Longshoremen's Association, Local 38-82, Inc. in attempting to secure or securing a charter or in attempting to have or in having any affiliation with the Committee for In-
[fol. 82] dustrial Organization or with the Committee for Industrial Organization, Pacific Coast District, or with the International Longshoremen's & Warehousemen's Union

or with the Committee for Industrial Organization Industrial Council of Los Angeles, be and are declared void, illegal, improper and beyond the powers of the said corporation and as having no legal force and effect.

II

That the acts of the said officers and Board of Directors of the International Longshoremen's Association, Local 38-82, Inc. in authorizing and making expenditures to or on behalf of the said Committee for Industrial Organization or to or on behalf of the said Committee for Industrial Organization, Pacific Coast District or to or on behalf of the said International Longshoremen's & Warehousemen's Union, or to or on behalf of the Committee for Industrial Organization Industrial Council of Los Angeles, or to or on behalf of the said Don Cox, Elmer Mevert and J. D. Thomas, organizers for the Committee for Industrial Organization, be and are declared null and void and improper and beyond the powers of the said corporation and without warrant or justification.

III

That the said defendant officers and directors of said corporation, Roy M. Donnelly, as President, Francis G. Fetzer, as Secretary-Treasurer thereof, and Tom Provence, [fol. 83] Joe Simons, C. W. Hanson, B. Franklin, C. S. Pugh, A. Lindman, L. Young, A. W. Springer, W. S. Lawrence, M. A. Anderson, V. Black, George Murphy, Tom Parker, H. C. Viefhaus, R. Reedy, Dan Kelly, H. L. Bowen, Roy M. Donnelly and Francis G. Fetzer as directors have been guilty of deliberate violation of the Articles of Incorporation of the defendant corporation.

IV

That the defendant officers and directors of the said corporation shall account to the defendant corporation, International Longshoremen's Association, Local 38-82, Inc. for all funds of the said corporation expended by them or under their authority, in violation of the Articles of Incorporation and shall restore all funds expended by them or under their authority.

V

That the injunction pendente lite heretofore issued in this Court shall be made permanent.

VI

That the defendant officers and directors of the defendant corporation and/or their successors in office and the defendant corporation shall take all steps that may be necessary to maintain the charter of the International Longshoremen's Association, Local 38-82, Inc. in the American Federation of Labor, in accordance with the Articles of Incorporation of the defendant corporation, which shall include the payment of per capita taxes.

[fol. 84]

VII

That a receiver shall be appointed for the purpose of conducting and administering the affairs of the defendant corporation, International Longshoremen's Association, Local 38-82, Inc. in accordance with the obligations of the charter and the Articles of Incorporation of the said defendant and the contract obligations of the defendant corporation, which receiver shall operate under the direction of this Court, and that said receiver shall be empowered with all duties and rights to carry on the obligations and duties of the defendant corporation, International Longshoremen's Association, Local 38-82 Inc. in accordance with the charter and the Articles of Incorporation and agreements of the said defendant corporation International Longshoremen's Association, Local 38-82, Inc.

VIII

That the cross-complainant has the right and the power to amend its Articles of Incorporation; and that, by complying with the provisions of Sections 362, 362a and 362b of the Civil Code of the State of California, it may amend its Articles of Incorporation for any or all of the purposes provided by Section 362 of the Civil Code of the State of California.

IX

That plaintiff shall be awarded their costs of suit incurred herein.

Done in open court this 21st day of January, 1938.

Ruben S. Schmidt, Judge.

[fol. 85] IN SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES

In the Matter of H. R. BRIDGES, sometimes known as HARRY R. BRIDGES, In Contempt

AFFIDAVIT OF CHARLES E. SHARRITT

STATE OF CALIFORNIA
County of Los Angeles, ss.

CHARLES E. SHARRITT, being by me first duly sworn, deposes and says:

Affiant is informed and believes and upon such information and belief alleges that H. R. Bridges, who is also known as Harry R. Bridges, is now and at all times herein mentioned was the President of the International Longshoremen's and Warehousemen's Union, a voluntary, unincorporated association consisting of local unions of longshore, warehouse and other workers, which local unions are situated in the various parts of the Pacific Coast and elsewhere and thousands of whom are longshoremen employed at long-shore work in the various ports of the Pacific Coast; these longshore workers employed in Pacific Coast ports are organized into local unions which comprise District No. 1 of said International Longshoremen's and Warehousemen's Union; that said H. R. Bridges is now [fol. 86] and at all times herein mentioned was President of said District No. 1 of said International Longshoremen's Union.

Affiant is informed and believes and upon such information and belief alleges that said International Longshoremen's and Warehousemen's Union and all of the local unions organized thereunder and connected therewith are affiliated with the Committee for Industrial Organization, commonly known as the C.I.O., or with the Committee for Industrial Organization, Pacific Coast District.

Affiant is further informed and believes and upon such information and belief alleges that James D. O'Neil is the publicity agent for said Committee for Industrial Organization, Pacific Coast District, and for said International Longshoremen's and Warehousemen's Union, District No. 1 thereof.

Affiant is informed and believes and upon such information and belief alleges that on or about the 24th day of

January, 1938, the said H. R. Bridges dispatched a telegraphic message to Frances Perkins, Secretary of Labor in the Cabinet of the President of the United States, at Washington, D. C., which said telegram, contained words and figures as follows, to-wit:

"This decision is outrageous considering I.L.A. has 15 members (in San Pedro) and the International Longshore- [fol. 87] men-Warehousemen's Union has 3000. International Longshoremen-Warehousemen Union has petitioned the labor board for certification to represent San Pedro longshoremen with International Longshoremen Association denied representation because it represents only 15 men. Board hearing held; decision now pending. Attempted enforcement of Schmidt decision will tie up port of Los Angeles and involve entire Pacific Coast. International Longshoremen-Warehousemen Union, representing over 11,000 of the 12,000 longshoremen on the Pacific Coast, does not intend to allow state courts to override the majority vote of members in choosing its officers and representatives and to override the National Labor Relations Board."

That affiant is informed and believes and upon such information and belief alleges that said H. R. Bridges on said 24th day of January, 1938, or about the time of the sending of said telegram to said Frances Perkins, caused a copy thereof to be given to said James D. O'Neil for the purpose and with the intent that the contents of said telegram [fol. 88] should and would be furnished to and published in newspapers on the Pacific Coast and elsewhere.

Affiant is informed and believes and upon such information and belief alleges that said James D. O'Neil, acting as such publicity agent for said International Longshoremen's and Warehousemen's Union District No. 1 and pursuant to the express instructions of said H. R. Bridges and with his consent, gave said telegram to a newspaper reporter, or newspaper reporters, the name or names of whom are unknown to affiant.

That on or about the 24th and 25th days of January, 1938, excerpts from said telegram which are hereinabove set forth, were published in newspapers of wide and general circulation in the cities of San Francisco and Los Angeles in the State of California, and the sending of said telegram and the contents thereof were thus made public and re-

ceived wide and general publicity in the County of Los Angeles and elsewhere.

That on the date that the contents of said telegraphic message sent by said H. R. Bridges to said Frances Perkins, as aforesaid, was released for publication by said H. R. Bridges and said James D. O'Neil, as aforesaid, there was pending and undetermined before the Honorable Ruben S. Schmidt, Judge of the Superior Court of the State of California, in and for the County of Los Angeles, a certain [fol. 89] action entitled "P. W. Walker, et al., plaintiffs, vs. International Longshoremen's Association, Local 38-82, Inc., a corporation, et al., defendants," known as No. 420356 in the Superior Court of the State of California, in and for the County of Los Angeles, all as will more particularly appear from the affidavit of L. E. Lampton, subscribed and sworn to by him on the 24th day of February, 1938, and filed herein concurrently herewith, reference to which said affidavit is hereby made for further particulars.

Affiant is informed and believes and upon such information and belief alleges that the "decision" referred to in said telegram as "outrageous" is the judgment, and the order appointing a receiver contained therein, and the permanent injunction, signed and filed in said action No. 420356 on January 21st, 1938, by said Honorable Ruben S. Schmidt.

Affiant is informed and believes and upon such information and belief alleges that "I.L.A." as used in said telegram refers and was intended to refer to International Longshoremen's Association—Local 38-82, Inc., a corporation.

Affiant is informed and believes and upon such information and belief alleges that the "Schmidt decision" referred to in said telegram is the judgment and permanent injunction made and entered in said action No. 420356.

[fol. 90] Affiant is informed and believes and upon such information and belief alleges that International Longshoremen-Warehousemen Union referred to in said telegram as having 3000 members in San Pedro, is composed of those members of International Longshoremen's Association, Local No. 38-82, Inc., a corporation (one of the defendants in said action No. 420356), who are affiliated with and are members of said C. I. O. organization, and who were at the date of the publication of said telegram members of International Longshoremen's and Warehousemen's Union Local 1-13;

that said Local 1-13 is the San Pedro, California, local of said International Longshoremen's and Warehousemen's Union, District No. 1; that the "International Longshoremen-Warehousemen Union", which said Bridges stated in said telegram "has petitioned the labor board for certification to represent San Pedro longshoremen", and which said Bridges stated in said telegram "does not intend to allow state courts to override the majority vote of members in choosing its officers and representatives and to override the National Labor Relations Board" is International Longshoremen's and Warehousemen's Union, District No. 1, of which said H. R. Bridges is now and at all times herein mentioned was president, as aforesaid, and the statement in said telegram that said International Longshoremen-Warehousemen Union "does not intend to allow state courts to over-[fol. 91] ride the majority vote of members in choosing its officers and representatives and to override the National Labor Relations Board" was meant and was intended by said Bridges to mean that said International Longshoremen's and Warehousemen's Union District No. 1, and said International Longshoremen's and Warehousemen's Union Local 1-13, and the respective members of said organizations, did not intend to observe, abide by or be bound by judgments or orders theretofore rendered and made by said Ruben S. Schmidt, as Judge of said Superior Court in said action No. 420356, and unless any judgment or order thereafter to be made by said Ruben S. Schmidt, as Judge of said court, in connection with matters then pending before him as Judge of said court in said action No. 420356 should uphold and conform to the contentions of said two last mentioned unions, they and their respective members would not observe, abide by, or be bound by any subsequent judgment or order made by said Judge in said action; and the said statement in said telegram with reference to the overriding by state courts or the majority vote of members in choosing its officers and representatives referred, and was by said Bridges intended to refer, to the judgment theretofore rendered in said action No. 420356 by said Ruben S. Schmidt, as judge of said Superior Court, in which said judgment a receiver was appointed for International Longshoremen's [fol. 92] Association, Local 38-82, Inc., a corporation, and to the permanent injunction made and issued in said action by said judge; and the publication of the contents of said telegram to said Frances Perkins was calculated and in-

tended by said H. R. Bridges to influence the said Ruben S. Schmidt in the decision of the matters pertaining to said action pending before him on the date upon which the contents of said telegram were published, to-wit, a motion for a new trial in said action, a motion to vacate the judgment and decision theretofore made and entered therein, and the appointment of a receiver for said International Longshoremen's Association, Local 38-82, Inc., a corporation, provided for in said judgment, and to vacate the permanent injunction made and entered in said action; and the contents of said telegram, as hereinabove set forth, were put in the course of publication by said H. R. Bridges for the purpose of influencing the said Ruben S. Schmidt to make an order granting a new trial in said action, or to vacate said judgment and decision and discharge said receiver or vacate said permanent injunction theretofore made and entered in said action.

That the statements contained in said telegram and the publication of the fact of sending said telegram and the publication of the contents thereof as aforesaid were in and [fols. 93-110] of themselves calculated and had inherent tendency to:

(1) Interfere with, influence, sway and control the proceedings in said action No. 420356, and interfere with, sway, control, embarrass and influence the actions and decisions of said Ruben S. Schmidt acting as a judge of said Superior Court;

(2) Interfere with the orderly and due administration of justice in said action;

(3) Bring about and cause the vacation of the judgment theretofore made by said Ruben S. Schmidt and the appointment of a receiver for said International Longshoremen's Association, Local 38-82, Inc., a corporation, provided for in said judgment, and a vacation of the permanent injunction theretofore rendered and entered in said action, and to cause said judge to grant a new trial in said action, or to modify said judgment, or said permanent injunction.

Charles E. Sharritt.

Subscribed and sworn to before me this 24th day of February, 1938. Ernestine Stahlhut, Notary Public in and for the County of Los Angeles, State of California. (Seal.)

[fol. 111] EXHIBIT "B" TO PETITION

IN SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES

No. 420356

In the Matter of H. R. BRIDGES, Sometimes Known as HARRY R. BRIDGES, in Contempt

ORDER TO SHOW CAUSE

It appearing to the Court that an order to show cause was made by this Court on the 24th day of February, 1938, in the above entitled matter requiring the said H. R. Bridges, sometimes known as Harry R. Bridges, to show cause in this Court on the 17th day of March, 1938, why he should not be punished for contempt, and that it has been impossible to serve said order to show cause upon the said H. R. Bridges because of his absence from the State of California; and

It Further Appearing to the Court that an order to show cause was made by this Court on the 17th day of March, 1938, in the above entitled matter, requiring the said H. R. Bridges, to show cause in this Court on the 29th day of April, 1938, why he should not be punished for contempt, and that it has been impossible to serve said order to show cause upon said H. R. Bridges because of his absence from the State of California; and

It Further Appearing to the Court that an order to show cause was made by this Court on the 30th day of April, 1938, in the above entitled matter, requiring the said H. R. Bridges, sometimes known as Harry R. Bridges, to show [fol. 112] cause in this Court on the 24th day of May, 1938, why he should not be punished for contempt, and that it has been impossible to serve said order to show cause upon said H. R. Bridges because of his absence from the State of California, and inability of process servers to serve him:

Now, in consideration of the premises, and upon reading the affidavits of L. E. Lampton, J. Louis Elkins, Charles E. Sharritt and A. G. Stanham and the exhibits attached thereto, which affidavits were filed herein on February 24, 1938, and good cause appearing therein for this order,

It is Hereby Ordered that said H. R. Bridges, sometimes known as Harry R. Bridges, do be and appear before the above named Superior Court in Department No. 1, at the hour of 10:00 o'clock A. M. on the 24th day of June, 1938,

then and there to show cause, if any there be, why he should not be adjudged guilty of contempt of Court and punished therefor by reason of the acts and each of the acts set forth in the said affidavits and alleged to have been committed by him, reference to said affidavits being hereby made for particulars of the acts charged.

And it is Further Ordered that this order to show cause and all of the above mentioned affidavits on file herein be served upon the said H. R. Bridges on or before the 17th day of June, 1938, by delivering a copy of this order to show cause and a copy of said affidavits to the said H. R. Bridges personally.

Dated this 24th day of May, 1938.

Ruben S. Schmidt, Judge of the Superior Court.

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[fol. 113] EXHIBIT "C" TO PETITION

IN SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES

No. 420356

In the Matter of HARRY R. BRIDGES, In Contempt

MOTION TO QUASH ORDER TO SHOW CAUSE IN RE CONTEMPT

To the Honorable Judge Presiding:

You will hereby please take notice that the respondent, H. R. Bridges, will by his counsel, Messrs. A. L. Wirin, Ben Margolis and Charles J. Katz, in Department 22 of the above entitled court, on the 13th day of July, 1938, at the hour of 9:00 o'clock A. M., or at such other place and time as that certain order to show cause in re contempt dated the 24th day of May, 1938, may be heard, move the said court to quash and recall said order to show cause dated May 24th, 1938 issued by the Honorable Ruben S. Schmidt, Judge.

Said motion will be made upon the following grounds:

First. That the above entitled court has no jurisdiction to hear or determine said order to show cause, in that the affidavits filed in support thereof, and the facts averred in support of, and for the issuance of, said order to show cause, are not sufficient to confer jurisdiction upon the said above

entitled court to hear and determine said order to show [fol. 114] cause, and that the facts in support of, and upon which said order to show cause were issued, do not constitute contempt.

Second. That said order to show cause, and this entire proceeding in contempt, is violative of the provisions of the Fourteenth Amendment to the Constitution of the United States of America, and of the provisions of Sections 9, 10, 11 and 21 of Article I of the Constitution of the State of California, as now in full force and effect, in that these proceedings do deprive the respondent herein of his liberty and property without due process of law, and do deny to the respondent herein the equal protection of the law, in this:

I

With respect to the first count set forth in said proceedings in contempt:

(1) That, as appears from the affidavit on file herein signed by Louis Elkins, Executive Secretary of the Los Angeles Bar Association, the respondent H. R. Bridges is the President of the International Longshoremen's and Warehousemen's Union (hereinafter referred to as the I. L. W. U.). It further appears from the findings of fact and judgment (a copy of which findings of fact and judgment is made a part of the order to show cause in re contempt herein) rendered in the action entitled "P. W. [fol. 115] Walker, et al., v. International Longshoremen's Association, Local 38-82, Inc., a corporation", cause Number 420356, that the officers and directors of the defendant incorporated union sought to affiliate with the said I. L. W. U.; it further appears from said judgment and findings of fact that the said I. L. W. U. was operating the hiring hall, and that the defendant incorporated union was not operating or participating in the operation of the said hiring hall, or sending men out to work under the working agreements with the ship owners (see finding of fact number 17); that as appears from said findings of fact and judgment, the basic question involved in said action was the effect of the Articles of Incorporation of the defendant incorporated union upon the desired transfer of affiliation from the American Federation of Labor to the Committee for Industrial Organization the said I. L. W. U. was a member and affiliate; that

pursuant to the provisions of the said judgment in action Number 420356, the court appointed a receiver to perform the following, among other acts (judgment page 3, lines 10-30);

[fol. 116] "To carry out the obligations and duties imposed upon the said corporation and to exercise the privileges and rights conferred upon the said corporation by any agreements, particularly with employers, and to carry out such agreements with and through the members of the said corporation as and where provided in such agreements; and to take possession of the I. L. A, Local 38-82 meeting hall; and to participate actively in control of the San Pedro hiring hall and to carry out the working agreements through the members in good standing in said International Longshoremen's Association, Local 38-82; and to take all necessary steps to cause the International Longshoremen's & Warehousemen's Union to pay over to the said International Longshoremen's Association, Local 38-82 all funds heretofore collected by it as dues from members or former members of the said International Longshoremen's Association, Local 38-82 during any period in which the said International Longshoremen's & Warehousemen's Union assumed and took control of employment or operations under any of said agreements of International Longshoremen's Association, Local 38-82."

[fol. 117] That the said I. L. W. U. was not made a party defendant in said action Number 420356, and did not appear therein, and that as shown hereinabove, that the said I. L. W. U. was actually operating the hiring hall referred to; that without notice to it, the said receiver so appointed by the court was directed to take over said hiring hall and to carry out through said hiring hall the existing working agreements with the ship owners by members in good standing of the I. L. A. Local 38-82, Inc., thereby excluding from the use of said hiring hall and from the benefits of said agreements with the shipowners, and from their employment the longshoremen who transferred their affiliation to the I. L. W. U.

That at the time of the filing of the affidavit of H. R. Bridges, which affidavit forms the basis of the alleged contempt charged in Count One hereof, that there was pending in said cause Number 420356 a motion to vacate the said judgment appointing said receiver, and the findings of fact

and conclusions of law in support thereof; that as appears from the face of said motion to vacate the judgment, that said motion was noted as being one which would be made by [fol. 118] affidavits; that supporting affidavits constitute the proper legal method for moving to vacate a judgment appointing a receiver; that said affidavit of H. R. Bridges was a proper legal step necessary to set in operation the said motion to vacate said judgment in action Number 420356, and was properly filed therein, and was not a gratuitous act, and was not an improper act in and of itself; that as President of said I. L. W. U., the said H. R. Bridges, as part of his duties and his work as a labor official, knew the history of the struggle of the longshoremen for a hiring hall operated by representatives duly elected by a majority of the registered longshoremen, and knew the prime importance of the hiring hall to the longshoremen in their day to day labor, as well as the natural effect upon said longshoremen of any act of the court which would cause or might tend to cause any loss of control by the majority of the longshoremen of their own operations of the hiring hall; that said hiring hall is not property in any real or corporeal sense, but is the method by which longshoremen collectively bargain with and carry out their working agreements with the ship owners.

[fol. 119] That it was part of the business of, and part of the duty of the said H. R. Bridges, as such president of the said I. L. W. U., to advise the court of the said history and the said facts concerning said hiring hall and the effect of the taking away from the men of control thereof by representatives of their own choosing, and the effect of any act of the court in substituting for control by a majority of the men controlled by a receiver appointed by the court; that since a motion to vacate the order appointing a receiver was pending, the only appropriate or legal way to so advise the court was by an affidavit, and that such an affidavit was so filed in said cause Number 420356, and is now part of the files therein.

That the work of a labor leader is a proper and lawful calling; that filing an affidavit in a pending cause in a court where affidavits are permitted, is a lawful and proper act, and that there is no valid statute or ordinance prescribing either of said acts; that Count One in this proceeding in contempt has for its purpose punishment by imprisonment or fine, or both, of the said H. R. Bridges for the perform-

ance by him in a lawful manner of a lawful act, which was part of the duties and business of said H. R. Bridges, thus [fol. 120] depriving the said H. R. Bridges of his liberty and property without due process of law.

II

With respect to the Second Count in said proceedings in contempt:

(1) As appears affirmatively from the records in said Los Angeles Superior Court action Number 420356, a collective bargaining agreement exists between the various water front employers and the longshoremen on the Pacific Coast, and that by the terms of said agreement it is provided, among other things, that in case of a dispute, that the aid of the Department of Labor of the United States could be called upon; that it is the function of the Department of Labor of the United States, as provided by the provisions of Section 51 of Chapter 5 of Title 29 of the Code of the Laws of the United States of America, to act as mediator and to appoint commissioners of conciliation in labor disputes whenever, in the opinion of the Secretary of Labor, the interests of industrial peace may require it to be done; that the order appointing a receiver in case Number 420356 had the inherent tendency to effect the interests of industrial peace and the existing collective bargaining agreement with the [fol. 121] ship owners; that in Count Two in this proceeding in contempt, the unlawful act complained of is the sending of a telegram to the Secretary of Labor and the publication thereof by H. R. Bridges; that by this proceeding in contempt and Count Two thereof, it is sought to punish by imprisonment and/or fine, and/or by both, the said H. R. Bridges for his act in sending a telegram to the Secretary of Labor, in the Cabinet of the President of the United States, and that any such fine or imprisonment does constitute a deprivation of the liberty and property of the said H. R. Bridges without due process of law.

(2) That for the same causes and reasons, that said Second Count of said proceedings in contempt deprives the said H. R. Bridges of his liberty and property without due process of law, that said Count Two of said proceedings in contempt constitutes an unlawful abridgement of the constitutional guaranty of free speech of the said H. R. Bridges.

(3) That for the same causes and reasons as are set forth in sub-paragraphs (1) and (2) immediately hereinabove, that said Count Two of said proceeding in contempt constitutes an unlawful abridgement of the constitutional right [fol. 122] of the said H. R. Bridges to petition the government for a redress of grievances.

III

With respect to Count Three in said proceedings in contempt:

(1) As appears affirmatively from said Count Three, the said H. R. Bridges is alleged to have made open and public threats that a coastwise strike of the maritime workers on the Pacific Coast would be called, as a result of the orders and judgments made in said action Number 420356, and it is further alleged in said Count Three in said proceedings in contempt that the said H. R. Bridges did call a strike on January 28th, 1938, and that the members of the said I. L. W. U. were out on strike for one-half day on January 28, 1938, that assuming each of said allegations to be true for the purpose of this motion to quash, that said acts are, and each of them is, but the exercise of the right of free speech and free assemblage, and that each of said acts is a lawful act which cannot be rendered unlawful because of the motive alleged to have inspired each of such acts; that this proceeding in contempt and this attempt by Count Three thereof to punish by fine and/or imprisonment, or [fol. 123] both, the said H. R. Bridges for said acts, is an abridgement of the constitutional guaranty of free speech and free assemblage.

IV

With respect to this entire proceeding in contempt, and the three counts therein described, that said counts and each of them, and this entire proceeding in contempt is based upon the holding of an alleged strike and alleged threats to strike, and an affidavit containing alleged statements to the effect that the longshoremen of the Pacific Coast would not work unless they could retain control over their own hiring halls; that each of the acts and statements alleged in each of said counts of the within contempt proceedings are lawful and proper acts and statements; that an alleged threat to commit a lawful act is in itself a law-

ful act, embraced within the constitutional guaranty of liberty and property and due process of the Fourteenth Amendment to the Constitution of the United States, and of Sections 9, 10, 11 and 21 of Article I of the Constitution of the State of California; that the right to strike and the right to make an alleged threat of a strike, where a cessation of work is necessary consequence of a judicial decree, is guaranteed by the Thirteenth Amendment to the Constitution of the United States, and by Section 18 of Article I of the Constitution of the State of California, prohibiting [fol. 124] involuntary servitude, and will deny to the respondent due process of law as guaranteed by the Fourteenth Amendment to the Constitution of the United States and Sections 9, 10, 11 and 21 of Article I of the Constitution of the State of California.

V

That said order to show cause in re contempt, and each of the counts of contempt therein referred to, arises out of and is a result of that portion of the judgment rendered in Los Angeles Superior Court action No. 420356, appointing a receiver over the defendant incorporated union and empowering said receiver to perform the following duties:

"To carry out the obligations and duties imposed upon the said corporation and to exercise the privileges and rights conferred upon the said corporation by any agreements, particularly with employers, and to carry out such agreements with and through the members of the said corporation as and where provided in such agreements; and to take possession of the I. L. A., Local 38-82 meeting hall; and to participate actively in control of the San Pedro hiring hall and to carry out the working agreements through the members in good standing in said International Longshoremen's Association, Local 38-82 * * *."

[fol. 125] That each and all of the aliegedly contemptuous acts committed by the respondent arises out of, and was directly connected with the said order appointing receiver and empowering the said receiver to perform the acts hereinabove particularly set forth; that the above entitled court did not have jurisdiction so to do, and does not now have jurisdiction to appoint a receiver to perform the aforesaid acts, and that the appointment of said receiver by the court for the purposes and with the powers aforesaid was an in-

vasion of the sole and exclusive jurisdiction of the National Labor Relations Board to determine and designate the collective bargaining agent for employees in a given unit; that the sole and exclusive jurisdiction over the subject matter of the said order appointing receiver was vested in courts other than the Superior Court of the State of California, and that the said Superior Court of the State of California had no jurisdiction over the subject matter thereof, and that the instant contempt proceedings arising out of a cause wherein the court had no jurisdiction is likewise a proceeding in which this court has no jurisdiction.

That there is a defect of parties plaintiff in said proceedings in that this is a criminal proceeding, and the proper party plaintiff should be the People of the State of California vs. H. R. Bridges, sometimes known as Harry R. Bridges; and that the court is without jurisdiction to pro-[fol. 126] ceed because of the absence in said proceedings of the attorney general of the State of California, and/or the district attorney of the County of Los Angeles, and/or the failure of the said attorney general and the said district attorney to appear and prosecute said action.

That the failure of the appearance of said prosecuting officials, as aforesaid, and the prosecution of the defendant herein by private citizens constitutes a denial of due process of law as guaranteed to the defendant by the Fourteenth Amendment to the Constitution of the United States.

VII

That this motion will be based upon the records, files and pleadings in Los Angeles Superior Court action Number 420356, and pleadings in Los Angeles Superior Court action Number 423220, and upon this motion, and upon such affidavits as may be filed at the time of the hearing hereof.

Dated This — day of July, 1938.

A. L. Wirin, Ben Margolis, Charles J. Katz, By A. L. Wirin, Attorneys for H. R. Bridges.

[fol. 127] EXHIBIT "D" TO PETITION

IN SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES

No. 420356

In the Matter of H. R. BRIDGES, Sometimes Known as HARRY R. BRIDGES, In Contempt

DEMURRER TO ORDER TO SHOW CAUSE IN RE CONTEMPT

Comes now the respondent, H. R. Bridges, sometimes known as Harry R. Bridges, and for cause of demurrer to that certain order to show cause in re contempt, dated the 24th day of May, 1938, issued by the Honorable Ruben S. Schmidt, Judge of the Superior Court, and the affidavits in support thereof, said affidavits and order to show cause constituting the complaint herein, and respectfully alleges:

* * * * * * *

[fols. 128-133] III

That neither the said order to show cause, nor any part thereof, including the affidavits in support thereof, states facts sufficient to constitute a contempt, in that the same, and the whole thereof, appears upon its face to be violative of the provisions of the Fourteenth Amendment to the Constitution of the United States of America, and the provisions of Section 9, 10, 11 and 21 of Article I of the Constitution of the State of California, in that these proceedings deprive the respondent of his liberty and property, without due process of law, and do deny to the respondent the equal protection of the law.

* * * * * * *

[fols. 134-160] Wherefore, the respondent prays that this demurrer be sustained without leave to amend.

A. L. Wirin; Ben Margolis; Charles J. Katz. By Charles J. Katz, Attorneys for Respondent.

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[fol. 161] EXHIBIT "F" TO PETITION

IN SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES

No. 420356

In the Matter of H. R. BRIDGES, Sometimes Known as HARRY R. BRIDGES, In Contempt

ANSWER OF H. R. BRIDGES, SOMETIMES KNOWN AS HARRY R. BRIDGES

Comes now the defendant, H. R. Bridges, sometimes known as Harry R. Bridges, and answers the order to show cause, and the affidavits in support thereof, as follows:

With respect to the affidavit of J. Louis Elkins, and counts two and three thereof, answers as follows:

Second Count

Answering the allegations set forth on page 5 of said affidavit of J. Louis Elkins, commencing on page 28 thereof, and continuing through and including line 16 at page 7 thereof, this defendant denies each and all of said allegations and averments therein set forth, excepting only that the defendant admits that James D. O'Neal was the publicity agent for the International Longshoremen's and Warehousemen's Union, and excepting only that the defendant admits that the excerpts of said telegram were published in newspapers of wide and general circulation in the cities of San Francisco and Los Angeles, and admits that the sending of said telegram was made public and received wide and [fol. 162] general publicity, but in this connection defendant denies that he did any act in connection with said telegram or the publication thereof, excepting to cause the same to be sent to Frances Perkins, in the ordinary and regular course of the lawful business and duties of this defendant as President of the said I. L. W. U.; further affirmatively answering the averments set forth in said second count, this defendant affirmatively avers that pursuant to the provisions of the collective bargaining agreement between the waterfront employers and longshoremen of the Pacific Coast, (which collective bargaining agreement is now an exhibit on file in these proceedings), that the offices of the

Department of Labor of the United States of America might be called upon for assistance in labor disputes or questions involving the cessation of work; that further and pursuant to the provisions of Section 51 of Chapter 5 of Title 29 of the United States Code Annotated, the Secretary of Labor has power to act as mediator and to appoint commissioners of conciliation in labor disputes whenever in the judgment of the Department of Labor the interests of industrial peace may require it to be done: further, defendant affirmatively alleges that by long and constant practice inaugurated by the Department of Labor of the United States, as part of the public policy of the United States, leaders of labor unions have been, and now are, urged and requested to keep in- [fols. 163-165] formed the Department of Labor, and to seek its aid and assistance whenever the interests of labor may require such aid and assistance; that defendant signed said telegram in good faith and in accordance with his understanding of said collective bar*b*aining contract, and the provisions of the law above referred to, and the custom and practice above referred to; that said telegram was not signed or sent for the purpose of interfering with the said proceedings or interfering with the orderly administration of justice, or impeding or embarrassing said court or for any other unlawful or improper purpose.

* * * * * * *

[fol. 166] Wherefore, defendant prays that the order to show cause herein be discharged and dismissed and that the defendant be adjudged not guilty of contempt.

Ben Margolis, A. L. Wirin, Charles J. Katz, by ——
——, Attorneys for H. R. Bridges sometimes known as Harry R. Bridges.

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[fol. 167] *Duly sworn to by Harry R. Bridges. Jurat omitted in printing.*

[fol. 168] EXHIBIT "G" TO PETITION

IN SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES

No. 420356

In the Matter of H. R. BRIDGES, Sometimes Known as Harry R. Bridges, in Contempt

DEMAND FOR JURY TRIAL

To the Honorable, the Above Entitled Superior Court:

The defendant in the above entitled proceedings in contempt, by his counsel of record hereby makes written demand for a trial by jury of the issues raised by the order to show cause and answer now on file herein.

Dated: This twenty-ninth day of August, 1938.

A. L. Wirin, Ben Margolis, Charles J. Katz, by Charles J. Katz, Counsel for the Defendant.

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[fol. 169] EXHIBIT "H" TO PETITION

Tuesday, September 13, 1938.

The Court: There are two statements. Counsel requested that, before all these newspaper stories went in, I indicate what value I would place upon them. As I have indicated here today, I have read them, and I think I am accurate in this statement (I am quite sure that I am) that from the reading of those newspaper stories I have drawn one inference, and one inference only. I think that is all they are susceptible of. They certainly are hearsay as to the events, and I have not considered any of the events as being established by them as facts in the case. I have drawn one inference from them, and one inference only, and that is that Mr. Bridges, himself, the Walker case, the dispute in San Pedro out of which the Walker case arose and the conflict between the I. L. A. and I. L. W. U. were hot news. Now then, aside from anything to do with the Walker case at all, or with the subsequent decision by Judge Schmidt, but the relations of the I. L. A. and I. L. W. U. before the National Labor Relations Board, they were hot news and a story arose from that, and that is all in those exhibits.

This is merely a preliminary observation. I am not considering what the possible effect of Mr. Ashburn's argument would be concerning the inference that might have been drawn from the fact that the whole telegram is not [fol. 170] before us. I am not basing my decision at all upon that. When a trial judge comes to this point in the discharge of his duties sometimes he is undecided, but he cannot do as a jury does—disagree. Sometimes when the decision is over, he is not at all sure that he has been correct on questions of fact. There are matters in conflict. I have an idea that sometimes even where the trial judge feels that way, he does arrive at a correct conclusion, and it may be in cases such as this, where the picture seems clear that, nevertheless, he arrived at an incorrect conclusion due to the fact that in the use of human agencies in administering justice that probably is inevitable. The fact remains, that rightly or wrongly the facts in the whole picture seem rather clear to me.

This case grows out of—and many cases do—two circles of influence coming in conflict, one with the other. Now, we who are officers of the Court, have a high ideal with regard to our responsibility to the Court; not that we are serving ourselves, but we believe serving the public, I hope. Courts are a good deal like the fire stations. We hope we will never have to use them, and ordinarily you do not have to use them, but when you have a fire you hope the fire station is functioning efficiently and that there won't be any traffic out in front of the doors to keep the fire engines from coming out.

Mr. Bridges states that up to the time of the Walker case [fol. 171] the unions had no difficulty in courts. I do not know what his personal history is. I did not go into that, and it is not proper here. At least, he is in a case now, and he is interested in having the Court perform its functions without outside influence of any sort, and it is the duty of the officers of the Court to protect the Court in that position as far as they may. But now, in doing that we, who are officers of the Court, are responsible for the discharge of that duty and we must be careful not to assume too exalted a position. The work which we are doing must be guarded against interference, but that does not mean that when we are at that work all outside work has to stop. Street cars carrying the public going by may interfere with

us, but we do not stop their operation, and other business has to go on.

Notwithstanding the fact that there was a case pending in this Court, the Walker case, undetermined, the work for which Mr. Bridges was responsible had to go on. As a labor leader, he had his problems and he had his methods of discharging those problems and his interest was centered on those. I take it he would cease to be a labor leader if criticism such as his lieutenant made of his speech on January 28th, was a continuing criticism. He lost this usual efficiency and did not put over his message as he usually does. The tactics that he has to pursue to accomplish that which he is responsible for requires him to assume a position of [fol. 172] leadership, that the men in his organization may feel that he is not asleep on the job, that he actually is going to be energetic and that their interests are going to be protected in his hands.

Now, we have these two businesses going on and each has to give due regard to the other. By way of example, in the present case, assuming that Mr. Bridges had called the meeting of January 28th, the stop work meeting, not as a protest meeting, but for the purpose which was given by the various witnesses here—and I think we may accept that as the real purpose of the meeting, because they were face to face with a serious situation down there and certainly, from their viewpoint, the only satisfactory way was to call a meeting of the men involved. Taking that at its face value, the very calling of that meeting when we had a case pending here, would tend to interfere, although the meeting, itself, was not public, but the fact of the meeting would be public and anyone who knew that would draw their inference as to its purpose and it would tend to embarrass the Court concerning a pending case. Then, I take it, if that should be called contempt of court, it would be of such minor significance that it ought not to be noticed, because the object of the meeting was a perfectly legitimate one and the only reasonable method of solving that problem. If that was the method employed and the interference with the Court and embarrassment of the Court was entirely in- [fol. 173] cidental, such as the noise that street cars make in going by it would have, therefore, to be overlooked.

But we come to the telegram and we have an illustration of that conflict of interest which is not as justified as the

meeting would be. First, with respect to Mr. Bridges' responsibility for the publicity given the telegram, it seems to me quite clear—and I am not speaking for his conscience, but as a reasonable man—it seems to me he must accept it as a fact with the setup they have there, that the sending of that telegram was no more his act than the publicity given to the telegram was his act. He dictated it to his stenographer, his secretary, and told her to send it. There you have an express command. But if you do not, an express command respecting publicity, you are going to have the publicity, because of the telegram, itself. In dictating that telegram to his secretary he did not need to tell her in words to send it, and certainly she knew when she sent the telegram what to do with a copy of it, because it was an established custom. When the copy of that telegram was put in the hands of a man who is in the organization for the purpose of giving the telegram—which is a news story in anybody's language—publicity, it was just the same as sending it directly to the newspapers. Certainly that will be my viewpoint, and I see no break in the causation there.

Now, the telegram, while we do not have the whole of it, [fol. 174] I think that it is obvious that the reason that what we do have was published was that that was the colorful part of it. There is no drawing of punches in that telegram. Mr. Bridges cannot be criticized for that. Unfortunately, the wording of that telegram made it the sort of a telegram from which portions would be chosen for publication by the newspapers, and any part of it which was innocuous, was not published. The testimony is that Mr. Bridges read the whole telegram to the reporters and they chose what would make a story. It was inevitable that the portions of that telegram which were published would be published, if it were sent out and the ordinary course of affairs were carried through without interruption. Now, as inevitably—and there can be no argument, it seems to me, against this conclusion—that telegram, published due to its nature and due to its contents which were published, would inevitably interfere with the orderly administration of justice; not that it would cause the judge to change his mind, but it did embarrass and disturb the administration of justice and is as typical a case, it seems to me of a contempt, as several others might be, such as the Chronical case, and others. I am using the word "inevitable" in the sense of something that follows as a matter of reason—not inevitable in that

it is impossible not to be otherwise,—but inevitable in that it is dead sure to occur, as the sending of the telegram under [fol. 175] the office set-up of Mr. Bridges and resulting in its publication in Southern California papers where this was a live issue.

Now, I have reached the conclusion, not only because I concede the rule to be that Mr. Bridges is entitled to the presumption of innocence, that unless a matter is proven beyond a reasonable doubt I must conclude that it is not so, but because it seems to me to be a reasonable inference to be drawn from all the circumstances of his sending of the telegram, that there was no specific intent on his part to use this telegram as a subterfuge to get his message over to the judge. I do not think it was sent with the specific intent of influencing Judge Schmidt in his decision. It seems to me that if I am correct in what I believe to be—if not a deliberate intent and purpose on the part of Mr. Bridges arising as a result of counseling with himself in trying to dictate the telegram, nevertheless, as a very inevitable result of his habits of doing business and of facing the problem, as he has to, of keeping the employers aware of the fact that they have employees looking after their own interests and keeping the employees, themselves, aware of the fact that they have a leader looking after their interests, and keeping the public generally aware of the fact that the I. L. W. U. is not going to take it lying down—it seems to be I am making a better case for Mr. Bridges by assuming two purposes for sending this telegram in addition [fol. 176] to the one which I concede to be a purpose, that is, of informing the Administration at Washington that there was a crisis pending down here. It was his purpose and it is a part of—it seems to me—clearly a part of his approach to his problem, which is an ever present one, and a part of the reason for the particular wording that went into this telegram, to let the employers and employees know that the matter was being energetically watched. If I did not feel that, I would think more seriously of the interference with the Court. Were the only purpose that which has been expressed to us here, and that was informing Mrs. Perkins of the things which she already knew—I think these other purposes, in other words, go to mitigate that which I feel to be an interference—inevitable interference with the conduct of the proceedings which were still pending.

Now then, it follows from that, that I am of the opinion

that charges of contempt have been made out, and in measuring the culpability, as viewed between these two conflicting forces, if I did not believe that Mr. Bridges had no intent in sending this telegram to influence the judge,—rather, put it this way; if I believed the evidence here proved the whole case as set forth in the affidavit, I would consider the punishment permitted under the Code to be inadequate. But, as I say, I do not consider that to be so, but it is a case of finding the place where the balance stops between justification for [fol. 177] sending a telegram worded as this was, and the harm done to the administration of justice.

So that the order which will be entered, or the formal order to be drawn up should be, and will be that a contempt has been established and that, as punishment for the contempt, a fine of $125.00 be paid, and I will make a better rate on that than is usually given. In case it is not paid it will be at the rate of one day for each $25.00 not paid.

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[fol. 178] EXHIBIT "I" TO PETITION

IN SUPERIOR COURT, COUNTY OF LOS ANGELES, CALIFORNIA

No. 420356

In the Matter of H. R. BRIDGES, Sometimes Known as HARRY R. BRIDGES, in Contempt

JUDGMENT

The following facts appear: That by order made on the 24th day of May, 1938, Harry R. Bridges, defendant above named, was ordered to be and appear before the above entitled court, Department I thereof, at a time and place in said order set forth, then and there to show cause, if any there be, why he should not be adjudged guilty of contempt of court and punished therefor by reason of the acts and each of the acts set forth in certain affidavits filed in said court, which affidavits were sworn and subscribed to by J. Louis Elkins, Executive Secretary of the Los Angeles Bar Association, L. E. Lampton, County Clerk, and Charles E. Sharritt and A. G. Stanham; and that thereafter said cause was ordered transferred to Department 22 of said court for further proceedings;

That on the 15th day of July, there came on for hearing in said Department 22, the motion to quash said order and the demurrers both general and special interposed on behalf of the defendant, Messrs. Charles J. Katz, Ben Margolis, and A. L. Wirin, appearing as counsel for said defendant [fol. 179] Harry R. Bridges, and Messrs. Allen W. Ashburn, Michael G. Luddy and Arnold Praeger, attorneys from the Los Angeles Bar Association, appearing as friends and officers of the court to assist the court on the hearing of said motion and demurrers;

That thereafter, to wit, on the 16th day of August, 1938, the following order was made: "(1) The demurrers are overruled, the motion to quash and recall the order to show cause is denied; (2) Messrs. Allen W. Ashburn, Arnold Praeger and Michael G. Luddy, members of the State Bar of California, are appointed and authorized to prosecute, on behalf of this court, the contempt proceedings now pending against the defendant, Harry R. Bridges, in so far as the same relate to the matters identified by reference to counts II and III in the affidavit of J. Louis Elkins; (3) The defendant Harry R. Bridges may have to and including the twenty-ninth day of August, 1938, in which to make answer to the affidavits referred to in the order to show cause heretofore served upon him and to serve a copy of his answer upon counsel above named and file said answer with this court. (4) The said contempt proceedings, in so far as the same relate to the matters identified by reference to counts II and III in the affidavit of J. Louis Elkins, are set down for hearing on the 6th day of September, 1938, at the hour of 10 o'clock a. m., in Department 22 of this court."

[fol. 180] That thereafter, to wit, on the 29th day of August, 1938, the answer of said Harry R. Bridges to the allegations contained in said affidavit was filed;

That thereafter, on the 6th, 7th, 12th and 13th days of September, 1938, the issues raised by said affidavits and the answer of Harry R. Bridges thereto, came on for hearing in said Department 22, the defendant Harry R. Bridges appearing in person and by his counsel, Messrs. Charles J. Katz and A. L. Wirin, and Messrs. Allen W. Ashburn, Michael G. Luddy and Arnold Praeger appearing on behalf of the court, to prosecute this proceeding pursuant to said order;

That the court proceeded to investigate the charges contained in Counts II and III of the affidavit subscribed and sworn to by J. Louis Elkins, and in the other affidavits above referred to;

That evidence, both oral and written, was received and the cause was submitted to the court for decision, and the court being fully advised in the premises finds as follows:

I

That the defendant did not do and perform the acts set forth in Count III in the affidavit of J. Louis Elkins, and as to Count III the defendant is not guilty of contempt of court.

[fol. 181] II

That on or about the 18th day of September, 1937, an action was commenced in the above entitled court by the filing of a complaint and the issuance of a summons entitled "P. W. Walker, et al., plaintiffs, vs. International Longshoremen's Association—Local 38-82, Inc., a corporation, et al., defendants," which said action is known as action number 420356 in said court.

That said action was tried in the above entitled court before the Honorable Ruben S. Schmidt, as Judge thereof, and on the 21st day of January, 1938, the said Ruben S. Schmidt, as Judge of said court, made, signed and filed his Findings of Fact and Conclusions of Law in said action.

That thereafter, but on the same day, a judgment and permanent injunction in said action were made and filed, in and by the terms of which a receiver was appointed over said International Longshoremen's Association, Local 38-82, Inc., and said receiver on said date qualified by filing a bond required by said judgment to be filed by him, and by making and filing his oath as such receiver.

That on the next day, to wit, the 22nd day of January, an order was made and entered by the court, staying the execution of said judgment and said injunction to the 29th day of January, 1938, which said order was filed on January 24, 1938; that said judgment and permanent injunction were entered by the clerk of this court, on the 24th day of Jan-[fol. 182] uary, 1938, in the judgment book kept by him for that purpose, and that on said date all the defendants in said action, against whom judgment had been rendered and

said permanent injunction issued, made and served a notice of intention to move for a new trial and a notice of motion to vacate the judgment and decision in said action, which said notice of intention was filed on January 26, 1938.

That from the time of the filing of said action, to and including the time of the events hereinafter referred to, the existence of said action and of the controversy involved therein received wide and general publicity in the Pacific Coast states of the United States of America. That almost daily during said period news items respecting the controversy involved in said action, and respecting conditions in the maritime industry on the Pacific Coast as a result of said controversy, appeared in the daily newspapers published and circulated in the City of Los Angeles and other cities in the County of Los Angeles, and that the existence of said controversy and of the fact that the said controversy was pending in the courts for determination was a matter of great public interest and general public discussion.

That on the 24th day of January, 1938, the defendant Harry R. Bridges dispatched a telegraphic message to Frances Perkins, Secretary of Labor in the Cabinet of the President of the United States, at Washington, D. C., which [fol. 183] telegram contained words and figures as follows, to wit: This decision is outrageous considering I. L. A. has 15 members (in San Pedro) and the International Longshoremen-Warehousemen Union has 3000. International Longshoremen-Warehousemen Union has petitioned the labor board for certification to represent San Pedro longshoremen with International Longshoremen Association denied representation because it represents only 15 men. Board hearing held; decision now pending; Attempted enforcement of Schmidt decision will tie-up port of Los Angeles and involve entire Pacific Coast. International Longshoremen-Warehousemen Union, representing over 11,000 of the 12,000 longshoremen on the Pacific Coast, does not intend to allow state courts to override the majority vote of members in choosing its officers and representatives and to override the National Labor Relations Board." That the words "this decision" and the words "Schmidt decision," as used in the telegram, referred to the judgment and permanent injunction in which was contained an order appointing a receiver, as hereinabove noted. That the initials "I. L. A.," referred to in said telegram, referred to

International Longshoremen's Association, Local 38-82, Inc., hereinabove referred to.

That at or about the time of the sending of said telegram the defendant Harry R. Bridges caused a copy thereto to be given to one James D. O'Neil, for the purpose and with the intent that the contents of said telegram should, and [fol. 184] would be, furnished to and published in newspapers on the Pacific Coast and elsewhere, and said James D. O'Neil did give said telegram to newspaper reporters, and on the 24th and 25th days of January, 1938, the portion of said telegram above set forth was published in newspapers of wide and general circulation in the cities of San Francisco and Los Angeles, in the state of California, and the sending of said telegram and the contents thereof were thus made public and received wide and general publicity in the County of Los Angeles and elsewhere.

That the statements contained in said telegram, and the publication of the fact of the sending of said telegram, and the publication of the contents thereof, all as aforesaid, were in and of themselves calculated, and had, an inherent tendency to interfere with the orderly and due administration of justice in said action No. 420356, and to interfere with, influence, sway, and control the proceedings in said action, and to embarrass and influence the actions and decisions of the judge before whom said action was pending.

Wherefore, it is Adjudged and Decreed that, by reason of the foregoing acts, the defendant Harry R. Bridges has unlawfully interfered with the proceedings of this court, and he is guilty of contempt of court, and that because thereof, defendant Harry R. Bridges is ordered to pay a fine of $125.00; that in default of the payment of said fine on [fol. 185] or before 5 p. m., on the 10th day of October, 1938, said defendant shall be imprisoned in the county jail in the proposition of one day's imprisonment for each $25.00 of said fine, until said fine be wholly satisfied, and that the defendant be discharged on payment of such portion of said fine which shall not have been satisfied by imprisonment at the rate above prescribed.

Dated this 30th day of September, 1938.

Edward T. Bishop, Judge.

[fol. 186] EXHIBIT "J" TO PETITION

IN SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES

No. 420356

In the Matter of H. R. BRIDGES, Sometimes Known as HARRY R. BRIDGES, in Contempt

NOTICE OF MOTIONS: FIRST, TO DISMISS SECOND, TO VACATE JUDGMENT OF CONTEMPT THIRD, FOR NEW TRIAL

To the Above Entitled the Superior Court of the State of California, in and for the County of Los Angeles, and to Messrs. Allan W. Ashbarn, Arnold Praeger and Michael C. Luddy, Esqs.:

You and Each of You Will Please Take Notice that the defendant, H. R. Bridges, sometimes known as Harry R. Bridges, will, on Thursday, the 13th day of October, 1938, at the hour of 2:00 o'clock P. M., or as soon thereafter as counsel may be heard, move the above entitled court, sitting in Department 22 thereof, as follows:

First, for an order to dismiss contempt proceedings; or

Second, in the event said motion be not granted, then for an order to vacate judgment of contempt; or,

Third, in the event said motion be not granted, then for an order granting a new trial.

Said motions, and each of them, will be based upon the following grounds:

[fol. 187] I

That said judgment, and said punishment for contempt imposed pursuant to said judgment, are violative of the Constitution of the State of California in the following respects:

(A) That said judgment denies to the defendant freedom of speech and freedom of the press, in contravention of Article I, Section 9 of the Constitution of the State of California;

(B) That said judgment denies to the defendant liberty and property without due process of law, in contravention

of Article I, Section 13, of the Constitution of the State of California, in that:

(a) It deprives him of the right to participate in and conduct his lawful occupation of executive and officer of a labor union;

(b) It is based upon a trial which did not include all of the essentials of a fair hearing in that the within proceeding is a criminal proceeding which was prosecuted by private parties, and not by the District Attorney of the County [fol. 188] of Los Angeles, nor by the Attorney General of the State of California, as by law provided;

(c) The defendant was denied the right to a trial by jury.

II

That said judgment, and said punishment for contempt imposed pursuant to said judgment, are violative of the Constitution of the United States of America, in the following respects:

(A) The following orders of the court deny to the defendant due process of law under the Fourteenth Amendment to the Constitution of the United States:

(a) The order of the court denying defendant's motion to quash the order to show cause in re contempt;

(b) The order of the court denying defendant's motion to dismiss proceedings on the ground that the proceeding herein is a criminal case and was not prosecuted by the District Attorney of the County of Los Angeles, State of California, nor by the Attorney General of the State of Cali- [fol. 189] fornia, but by private parties;

(c) The order of the court denying defendant's motion to dismiss the proceedings on the ground that all of the material allegations in the moving papers herein are based upon information and belief;

(d) The order of the court rejecting defendant's demand for trial by jury.

(B) The judgment of the court deprives the defendant of liberty and property without due process of law guaranteed to him by the Fourteenth Amendment to the Constitution of the United States, in that:

(a) It denies to the defendant freedom of speech and freedom of the press;

(b) It is a conviction based upon a complaint (moving papers) and evidence which do not contain any reasonably ascertainable standard of guilt and upon a complaint and evidence which do not allege or disclose facts indicating the existence of a clear and present danger to the government of the United States or to the State of California, as pre- [fol. 190] scribed by the decisions of the Supreme Court of the United States of America;

(c) It denies to the defendant the right to carry on and conduct his lawful occupation, to wit, the business of acting as executive of a labor union;

(d) It denies to the defendant the right to petition the government for a redress of grievances.

III

The court lost and/or exceeded its jurisdiction over the defendant and over the proceedings herein in the following respects and particulars:

(a) In denying defendant's objection to the introduction of testimony and defendant's motion to dismiss the proceedings upon the filing of a verified answer by the defendant denying, under oath, all of the material allegations in the moving papers herein, and alleging, upon oath, that the acts complained of in the moving papers were all performed by [fol. 191] the defendant in good faith, and without any intent to hinder, delay or obstruct justice, or interfere with the orderly administration of justice or influence the said court;

(b) In denying defendant's motion to dismiss the proceedings on the ground that all of the material allegations in the moving papers are made on information and belief;

(c) In denying defendant's demand for a trial by jury;

(d) In denying defendant's motion to dismiss the proceedings upon the conclusion of the prosecution's case;

(e) In adjudging the defendant guilty of contempt;

IV

That a new trial should be granted herein upon the following grounds:

(a) Insufficiency of the evidence to justify the judgment;

(b) That said judgment is against the law;

(c) Error in law occurring at the trial, excepted to by [fols. 192-219] the defendant.

These motions will be based upon the records, files and pleadings in the above entitled proceedings, and upon such affidavits as may be filed, within the time provided by law, prior to the hearing hereof.

Dated October 7th, 1938.

Gladstein, Grossman and Margolis; Charles J. Katz; A. L. Wirin. By Charles J. Katz, Attorneys for Defendant.

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[fol. 1] EXHIBIT "M" TO PETITION

IN SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES

No. 420356

Department 22. Hon. Edward T. Bishop, Judge

P. W. WALKER, et al., Plaintiffs,

vs.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION LOCAL 38-82 INC., et al., Defendants

**Reporter's Transcript**

In Re: Contempt

APPEARANCES:

For Plaintiffs: Arnold Praeger, Esq., Allen Ashburn, Esq., and Michael E. Luddy, Esq.

For Defendants: A. L. Wirin, Esq. and Chas. J. Katz, Esq.

[fol. 2] September 6, 1938; 10 o'clock A. M.

BRIAN BELL, called as a witness by the People, being first duly sworn, testified as follows:

The Clerk: State your full name, please.
A. Brian Bell.

Direct examination.

By Mr. Luddy:

Q. Mr. Bell, what is your profession or occupation?

Mr. Katz: To which we object, upon the ground that it is incompetent, irrelevant and immaterial, and our objection is to any evidence being introduced in this case, and I wonder if I may be heard briefly on that point.

(Prolonged argument.)

The Court: Objection overruled.

By Mr. Luddy:

Q. I think we asked you what your profession was?
A. I am the news editor of the Western Division of the Associated Press.
Q. How many years have you been connected with the Associated Press?
A. 15 years.
Q. At the present time, where do you make your headquarters?
[fol. 3] A. San Francisco and Los Angeles. I spend a portion of the time each month in Los Angeles, and the remainder in San Francisco.
Q. Do you have headquarters or bureaus, or some other names for that portion of the Associated Press in San Francisco, and that portion in Los Angeles?
A. We have bureaus.
Q. You are the executive in charge of the Los Angeles Bureau and also the executive in charge of the San Francisco Bureau. Is that right?
A. Yes, sir.
Q. And you were in charge of both of those bureaus in January of this year, were you?
A. Yes.

Q. So far as the operation of the Associated Press and the ordinary routine running of the bureaus at Los Angeles and in San Francisco, they are the same now as they were in January of this year?

A. Yes, sir.

Q. So, if perchance I should ask you questions that seem to relate to the present time, you will understand I am including the events as of January of this year, will you?

A. Yes, sir.

Q. And the Associated Press is a news gathering organization, is it not, and the various newspapers which have its service *as* known as members? Is that correct?

[fol. 4] A. Yes, sir; it is co-operative.

Q. And during January of this year did the Associated Press have members here in the City of Los Angeles?

A. Yes, sir.

Q. What papers were members of the Associated Press at that time here?

A. The Los Angeles Times, Los Angeles Examiner, The Los Angeles Herald and Express, Hollywood Citizen News, within the City of Los Angeles.

Q. And what papers in San Francisco were members of the Associated Press in January of this year?

A. The San Francisco Chronicle, San Francisco Examiner, San Francisco Call Bulletin.

Q. Under the contractural relationship that exists between the Associated Press and its members, does the Associated Press have the right to use any material which may appear in member papers?

A. Yes.

Mr. Katz: I move to strike out the answer for the purpose of entering an objection, and I object to it upon the ground that it is incompetent, irrelevant and immaterial.

The Court: Overruled.

By Mr. Luddy:

Q. Your answer was that it does have?

A. It does.

Q. Coming now to San Francisco, in the event that a member paper carrys a news item, is there any facility [fol. 5] which the Associated Press has for getting that news item, other than just picking it up out of the paper after the paper is printed?

Mr. Katz: That is objected to upon the ground it is immaterial, argumentative, and calls for a conclusion of the witness and is not binding upon the defendant, and is not within the issues of this case.

The Court: Overruled.

A. We received copies of stories written by our members in advance of publication.

By Mr. Luddy:

Q. The Chronicle in San Francisco is a morning or evening paper?

A. It is a morning paper.

Q. Is there an evening paper in San Francisco known as the News?

A. There is.

Q. In what manner do you receive at your bureau in San Francisco the Associated Press, new items which may be written for publication in the morning issue of the San Francisco Chronicle?

A. We receive copies of the story shortly after they are written.

Q. Would you explain that to the Court perhaps just a little more in detail? Assuming that a reporter writes a story in the city room of the Chronicle during the course of the evening for publication in the Chronicle in the morn- [fol. 6] ing; in what fashion would that news item come to the attention of your bureau in San Francisco?

A. A carbon copy would be placed on a hook and removed from that hook and delivered to our bureau on the second floor of the Chronicle Building.

Q. Your news bureau is in the same building that the San Francisco Chronicle is?

A. Yes, sir.

Q. And is there a hook in the city room, or some other room of the Chronicle upon which carbon copies of stories written by the reporters of the Chronicle are place- for the use of the Associated Press?

A. There should be.

Mr. Katz: I move to strike out the answer.

The Court: It may go out.

By Mr. Luddy:

Q. Is there such a hook?

A. Well, I have never seen the hook, so I can't say there is such a hook.

Mr. Luddy: I may state to the Court that it is a little out of order, but I am going to ask the witness to assume that there is a hook.

By Mr. Luddy:

Q. Assuming there is a hook, are you able to tell us how shortly after the carbon copy is placed on the hook, it would, in the ordinary routine, come into the bureau of the Associated Press?

Mr. Katz: Just a moment. I object to the question upon [fol. 7] the ground that it is assuming a fact not in evidence, and is incompetent, irrelevant and immaterial.

The Court: That is sometimes inevitable where you have a witness out of order. Overruled.

A. Through the alertness of a group of office boys this copy would be collected and sent to our office at intervals; it might be within the next minute, or it might be within several minutes. I would not say accurately how long it would take for the story to reach our bureau.

Q. Mr. Bell, are you familiar with the story that went out on the Associated Press Wire from San Francisco in January of this year which related to a telegram sent from Mr. Harry R. Bridges to Madam Perkins, the Secretary of Labor?

A. I saw the story.

Q. Do you know from what source the Associated Press acquired that story?

A. The San Francisco Chronicle.

Q. Do you know what time in the evening of the 24th of January, if that was the date upon which you acquired that story from the Chronicle?

A. I assume on the wire, in the early evening about 7:30, I would say, or before 8 o'clock, as I recall it.

Q. Do you know whether or not the story originated—that is, the story which the San Francisco Associated Press placed upon the wire originated in an article which Mr. Larry Resner had written for the Chronicle?

[fol. 8] A. I do not.

Q. When the story was placed upon the wire by the Associated Press, did it come to the members in Los Angeles?

A. To all of the members on the wire being served, yes.

Mr. Luddy: I think possibly it will appear in a large number of cases, or later be presented to the Court that there appears to be a symbol out of San Francisco on the wire consisting of the letters AP which are joined together and attached to those as a signature.

A. That means, "Associated Press".

By Mr. Luddy:

Q. In other words, where the letters AP appear on the date line, that means a story transmitted to the members of the Associated Press?

A. Unless there has been a typographical error, yes.

Mr. Luddy: That is all on direct, gentlemen.

Mr. Katz: No questions.

Mr. Luddy: All right, Mr. Bell. May it please the Court, this matter perhaps should have been taken up. Will you wait just a moment, Mr. Bell?

The Court: All right.

Mr. Luddy: May it please the Court, this is a matter that possibly should have been taken up at the opening of the hearing this morning, as to the situation that the Committee of the Bar Association finds itself in with respect to certain witnesses brought here from San Francisco, which is as follows: We have under subpoena pursuant to an order [fol. 9] which was issued by another judge of the Superior Court in your Honor's absence, which subpoena directed the presence here of Mr. Bell of the Associated Press, Mr. Resner, Mr. Eggleston and Mr. O'Neil. Those subpoenaes were issued and an order based thereon upon the application by affidavit of Mr. Praeger as one of the attorneys before this Court, setting forth the material witnesses. We desire to ask the Court that pursuant to Section 1329 of the Penal Code, an order be made fixing fees which are to be paid these four gentlemen for coming down here covering as near as the Court may estimate what the reasonable and necessary expenses were on the trip, and I believe the code provides $3.00 a day, in Code Section 1329. I believe your Honor has the code.

The Court: I have it here. It is not an order to be made where the witness is present, is it?

Mr. Luddy: No, it is not. If your Honor please, I just wanted, if possible, to have the order made and if the Court

wants to inquire from the witnesses as to what their expenses were, your Honor may do so. The affidavit should appear in support of the order.

Mr. Wirin: I may say that it is a matter over which we have no control and to which we have no objection, and if the Court feels that it is a proper charge against the County, it is all right with us.

The Court: I would much prefer to handle this in this fashion: Gentlemen, I am willing to make the order, because [fol. 10] it is a matter that may be gone into by the trial judge and I am willing to make the order, but I would like to have it in each case supported by some showing of reasonable expenses, and the matter can be handled without interrupting proceedings in the course of the trial.

Mr. Luddy: All right. I take it there is no reason why Mr. Bell cannot be excused from further attendance. Thank you, Mr. Bell. Mr. Bell, will you wait just a moment.

The Court: I do not know why we should make any exception to those coming in after the order has been made. The gentleman standing by the water cooler. I am sorry we haven't seats, but we will have to have the court room cleared of those who have not seats, the gentleman standing next to the railing was here when the order was made.

Mr. Luddy: Mr. Resner, please.

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[fol. 11] Lawrence Resner, called as a witness by the People, being first duly sworn, testified as follows:

The Clerk: State your full name, please.

A. Lawrence Resner.

The Clerk: How do you spell the last name?

A. R-e-s-n-e-r, Resner.

Direct examination.

By Mr. Luddy:

Q. Mr. Resner, what is your business?

A. I am a newspaper reporter for the San Francisco Chronicle.

Q. And were you engaged as a reporter on the Chronicle in January of this year?

A. Yes, sir.

Q. Were you handling any particular line of news at that time?

A. No, I am on general assignments.

Q. Your immediate superior being the City Editor of the Chronicle?

A. Yes, sir.

Q. And by being on general assignments, you mean that the City Editor assigns certain news stories to you to develop and to write?

A. That is correct.

[fol. 12] Q. Do you recall the preparation and writing of a story for the Chronicle which related to a telegram which Mr. Bridges was alleged to have sent to Madam Perkins, the Secretary of Labor, in January of this year?

A. I have, since it was brought to my attention by Mr. Chapman, who called on me.

Q. Did you write a story on that general subject matter?

A. I did write the story.

Q. Do you remember in what issue of your paper the story appeared?

A. I think it was in January.

Q. Would you say it was in the issue of January 25th?

A. May I see it?

Q. Yes. I show you this, with Mr. Katz's consent, and you may refresh your recollection as to the date on which the story appeared.

(Exhibiting newspaper to witness.)

A. I wrote that story.

Q. I didn't ask you about the particular story, but you did write a story on that subject, and the story did appear in the morning edition of the Chronicle on the 25th of January of this year. Is that correct?

A. That is right.

Q. Before you wrote that story, while you were preparing to write it, was your attention directed to any item which appeared in the afternoon edition of the news which ap-

[fol. 13] peared in San Francisco on the afternoon of January 24th?

A. Well, I think that it was first brought to the City Desk's attention when it appeared in the News, and they then told me, or instructed me to find out what it was about.

Q. Did you receive some instructions from your City Editor in regard to checking on a story that had appeared in the News the afternoon before?

A. Well, on the same afternoon it appeared in the News I was told to check on the story.

Q. Now, in connection with the obtaining of information upon which you say the story you wrote is based, with whom did you consult?

A. Do you mean to find out or to develop the story?

Q. That is right.

A. I called up Mr. O'Neil—Jim O'Neil.

Q. Mr. Jim O'Neil is, or was at that time the publicity agent of the C. I. O., was he not?

A. Yes, he handled their publicity.

Q. And is Jim O'Neil the one that has been referred to as James D. O'Neil?

A. I think that is his full name. I am sure.

Q. Were you acquainted with Mr. O'Neil prior to the time you wrote this particular story?

A. Yes, sir.

Q. Had you been in contact with him before in connection [fol. 14] with the obtaining of material in connection with writing stories with relation to labor matters in San Francisco?

A. Frequently.

Q. Frequently, you say?

A. Yes, sir.

Q. Over how long a period of time prior to January 25, 1938, had you been frequently in contact with Mr. O'Neil?

A. Well, I think during the time, however long it was before that particular date, that the regional office of the C. I. O. had been established. That is the period I remember. I don't know exactly how long it was.

Q. Would you say that was a period of a good many months?

A. Well, it was months—I don't know how many months.

Q. And it is a fact that in trying to secure any information, or desiring to secure any information from the C. I. O. or Mr. Bridges in relation to the C. I. O., you consulted Mr. O'Neil?

Mr. Katz: I am going to object to the question upon the ground that it is compound, leading and suggestive and is calling for a conclusion of the witness.

The Court: Objection overruled. Will you answer it?

A. Repeat it.

(Last question read.)

A. Yes.

By Mr. Luddy:

Q. And you had been doing that for several months, had you, prior to January 25, 1938?

[fol. 15] A. Whenever it was necessary to get information about the C. I. O.

Q. You recognized Mr. O'Neil as being the publicity agent and the one from whom you might procure all information concerning Mr. Bridges on the C. I. O., did you?

A. Yes, sir.

Mr. Katz: That is objected to upon the ground it is incompetent, irrelevant and immaterial, and calling for a conclusion of the witness and it is not binding upon the defendant.

The Court: If it isn't binding upon the defendant Bridges when the matter is all in, it may be stricken out.

Mr. Katz: I might say that I anticipate that the Court is going to rule that it is material, but for the purpose of protecting the record—I only do it for my record.

The Court: I recognize the necessity of protecting the record where there is a technicality. Objection overruled.

A. Well, I think you asked me if I got all of this information from O'Neil.

Mr. Katz: What is the answer?

The Court: You had better read the question.

(Last question read.)

A. I don't think that is the question. Wasn't there a question after that?

Mr. Katz: It was in regard to your securing information from Mr. O'Neil, as being the publicity man for the C. I. O.

[fol. 16] Mr. Luddy: I took it for granted when I said "Concerning Mr. Bridges and the C. I. O.," it related to his relation as a labor leader of the C. I. O.?

A. Yes.

The Court: Do we have you sufficiently confused now?

A. I don't think he has read back that question you wanted me to answer.

By Mr. Luddy:

Q. During the month of January, 1938, and for several months prior thereto, whenever you, as a newspaper man, desired to acquire information concerning the C. I. O. or Mr. Bridges' activities in connection with the C. I. O., whom would you contact?

A. Well, I admit Mr. O'Neil was the publicity director and the most convenient source and we frequently contacted him, but also we contacted other officials of the Longshoremen or C. I. O., and occasionally we got information from them, too.

Q. I think you referred to the fact that there was a news item appeared in the San Francisco News on January 24, 1938. I show you what appears to be a copy of the News of Monday, January 24, 1938, which has been shown counsel for Respondent and call your attention to the fact that on the bottom right hand corner of the front page appears to be about a quarter of a column item marked with blue pencil, and ask you if that is the news item to which your attention was directed by your City Editor?

[fol. 17] A. Yes, that is the item.

Mr. Luddy: I don't particularly care about offering the entire paper, but we should like to have that item which is down in the corner and which counsel has already seen, go into evidence. Mr. Katz, you will stipulate without my bringing someone from San Francisco, that that is a copy of the San Francisco News?

Mr. Katz: Yes, but we do not want to stipulate to that articles, because it doesn't appear what the telegram is, and it is some party's commentary about another one's statement.

Mr. Luddy: I want to show the mechanics, as to how this man worked, and how the story ultimately came to the papers here in Los Angeles.

The Court: You are offering that particular story.

Mr. Luddy: Yes, the portion only identified by the witness. I see no reason why it might not be torn right out of the paper. We have no objection to it, and it will only clutter up the record with all the papers here.

The Court: For the convenience of identifying these various exhibits those offered by counsel appointed by the Court will be made People's Exhibits, and this will be People's Exhibit No. 1.

By Mr. Luddy:

Q. Now, after your attention was called to the article concerning which you have just been testifying, you communicated with Mr. O'Neil, I think you have already testified. Is [fol. 18] that a fact?

A. Yes, sir.

Q. In what manner?

A. By telephone.

Q. Can you recall what conversation was had with Mr. O'Neil over the 'phone?

A. I asked him referring to this article in the News, if the telegram on that subject had been sent Mrs. Perkins, and he said it had, and I asked him if we could have a copy of it and he said we could, and he read it to me and I took it in the office on the typewriter and then——

Q. (Interrupting) In other words, he read what he told you was a verbatim copy of the telegram which had been sent by Mr. Bridges to Madam Perkins?

A. That is right.

Q. And you asked him if you might have a copy of it?

A. Yes, sir.

Q. Did you tell him who you were?

A. Yes.

Q. That is, he knew he was talking with Mr. Resner of the Chronicle, did he?

A. I am quite sure he did, yes sir.

Q. You took a copy of it as he dictated it over the telephone seated at your typewriter. Is that right?

A. Yes, sir.

Q. Now, there appears in Tuesday, January 25th, night [fol. 19] edition of the Chronicle a story entitled, "Bridges says court action means tie-up." Did you write that story?

A. I wrote the story, but not the headlines.

Mr. Luddy: This has already been shown to counsel and we desire to offer pages 1 and the continuation of the story on page 9 of the issue of the San Francisco Chronicle of January 25, 1938.

The Court: Are you offering that now?

Mr. Luddy: We are.

Mr. Katz: I object to it upon the ground it is incompetent, irrelevant and immaterial and is not binding upon the defendant in this action, was not dictated by the defendant or dictated under his direction and the only matter set forth

was that the telegram was read, and the only thing in issue, it seems to me, is that telegram.

The Court: Admitted as People's Exhibit 2.

By Mr. Luddy:

Q. Mr. Resner, are you familiar with the arrangements in the Chronicle office with respect to matters which are written by reporters of the Chronicle being sent to the Associated Press Bureau in San Francisco?

A. Well, our stories are written on what we call butts, which includes the original and three carbon copies, and we have spikes in the office on which we put duplicates of these stories, and one of those, I think, goes to the Associated Press.

Q. In other words, as you wrote the particular story which [fol. 20] has appeared in the issue of the Chronicle which has been just introduced in evidence, a duplicate copy was made by you and one duplicate copy placed on a hook for the benefit of the San Francisco Associated Press. Is that right?

A. Well, that is right. I only assume that is how it was handled.

Mr. Luddy: May it pelase the Court, we start out upon the theory that evidence which will be introdnced on the separate counts will be limited to those counts, and we find with respect to Mr. Resner and I think also with respect to two other witnesses that are here from San Francisco, we wish to elicit from them evidence which relates to both of the remaining counts, and with the permission of the Court and counsel we would like to interrogate them and others, even though it may relate to the second count or the third count.

The Court: Proceed.

Mr. Luddy: Counsel, I will show you these copies of the Chronicle for the 28th, 29th and 30th of January of this year. These are stories under the by-line of Larry Resner.

The Court: While counsel are reading the daily paper, we will take a short recess, largely for the purpose of having the windows thrown open so that we can get some fresh air. Take a very short recess.

(Recess.)

The Court: Are you ready to proceed? Is my understand- [fol. 21] ing correct, gentlemen, that what you are introducing here is not the whole sheet, but just that part?

Mr. Luddy: Yes.

The Court: All right.

By Mr. Luddy:

Q. Mr. Resner, coming back now briefly to the story which you wrote, and which appeared in the issue of the Chronicle on January 25, 1938, after you had received from Mr. O'Neill what purported to be a copy of the telegram; that is, after the copy had been dictated to you over the 'phone, did you have some conversation with Mr. Harry Bridges with respect to that telegram?

A. Well, after I had received the telegram the office wanted further information on the story and I then proceeded to call up Mr. Bridges.

Q. Do you remember what conversation you had with Mr. Bridges?

A. Well, I think in brief the conversation is in this article here.

Q. Do you recall whether or not—strike that out. Did you have any conversation with Mr. Bridges in which you mentioned the fact that you had received a copy of the telegram from Mr. O'Neil?

A. Well, I don't recall that I told him that I had received the telegram. I guess—I mean, we talked just generally of the fact that this telegram seemed to have been sent to Madam Perkins. That is the general situation referring [fol. 22] to the Los Angeles situation and that is what our conversation was about and he had his conversation with me about the situation down in Los Angeles.

Q. About the telegram that had been sent to Madam Perkins?

A. Not particularly about the telegram, but about the Los Angeles situation.

Q. Well, in your conversation with him—just a minute. Do you suppose if you were to briefly, as you may, just run through that article which you wrote and see whether or not it can be used to refresh your recollection so as to give us any more details as to any conversation you had with Mr. Bridges?

(Witness reads document.)

A. Why, I think the conversation that is in there, is more or less the substance of our conversation. I called him up after I had received a copy of the telegram from O'Neil. I don't think there is anything I can remember beyond that.

Q. Did you tell Mr. Bridges you did have a copy of the telegram from Mr. O'Neil?

A. I don't recall that I told him specifically that, but I think it was understood between us what we were talking about.

Q. Was there a reference in your conversation with him, or by you, or in your conversation to the telegram?

[fol. 23] A. I mean, as I say, I can't specifically remember that we did talk about the telegram. I mean, we had the telegram—I mean, there was no point in asking him about that, so what I asked him about was the legal action down in Los Angeles, which we didn't know anything about, and I think that is what we talked about and although he talked—might have referred to the telegram, that is not what we were talking about—what I wanted to find out was not that he sent the telegram, because I had it. O'Neil had told me they had sent it and we wanted to find out what the telegram meant.

Q. You called Mr. Bridges to ask what the telegram meant?

A. Yes.

Q. And did you ask him what the telegram meant?

A. Well, I didn't ask him—do you mean specifically, did I ask this specifically what the telegram was?

Q. No, not in those exact words, but did you in effect ask Mr. Bridges what the telegram meant?

Mr. Katz: I object to that upon the ground that it is calling for a conclusion of the witness, and is already asked and answered three or four times.

The Court: You may answer.

A. Repeat the question.

(Last question read.)

A. Well, as I say, Mr. Praeger——

The Court: Mr. Luddy.

[fol. 24] A. Pardon me. Mr. Luddy, I mean, as I recall our conversation, I didn't say, "What does this telegram mean?" because I had it and I mean, I am not entirely un-

familiar with those situations. I mean, that is, with longshoremen, but I mean he had sent the telegram to Mrs. Perkins and what I wanted to find out was this situation down in Los Angeles. I mean, Judge Schmidt had established a receivership over the San Pedro Local of the longshoremen, and that is what we talked about. I mean, as I recall the conversation, I don't recall specifically that we used the words—I mean, about the telegram, because our conversation—I mean, the effect that the telegram had been sent was a foregone conclusion in my mind and what I wanted to find out was what this legal action was down here, and I seem to be quite convinced in my mind that that was the extent of our conversation.

Q. Now, was your conversation with Mr. Bridges such that it was taken for granted in your conversation with him that he knew you had this telegram, or had a copy of it?

Mr. Katz: That is objected to upon the ground that it is calling for a conclusion of the witness.

The Court: Sustained. The answer is already in to the same effect.

By Mr. Luddy:

Q. Now, as I understand it, the City Desk—after you told them about the copy of the telegram that Mr. O'Neil had given you over the 'phone, the City Desk told you they wanted to get something more, did they?

[fol. 25] A. No. That is correct. I mean—I think I handed the copy of the telegram I had taken—I don't know. It was the City Editor. It may have been Mr. Chandler, the managing editor, and he read it over and told me to find out a little bit more what this means, and I called up Mr. Bridges.

Q. Now, as I recall the News story, that hadn't carried what purported to be a verbatim copy of the telegram at all?

A. No.

Q. So that the first intimation that you had as to an exact copy of the telegram was from Mr. O'Neil?

A. Yes, when I got the copy.

Q. Now, when you got that, you went to Mr. Chandler, the City Editor, and called his attention to the telegram?

A. Well, they knew I was getting it and when I got it, they wanted to see it and I showed it to them.

Q. And they instructed you to try and get something more on it, did they?

A. Yes sir, that is correct.

Q. And then you called Mr. Bridges on the 'phone?

A. Yes, sir.

Q. Do you recall what your opening of the conversation was with him over the 'phone? Did you introduce yourself, or anything of that sort?

A. Yes, I told him this was, and I named my name, and I asked him what the situation was all about—I mean, this receivership down in Los Angeles.

[fol. 26] The Court: Can you gentlemen hear over there?

Mr. Katz: No, sir.

The Court: Talk a little louder.

A. As I recall it, I told him who I was and asked him what the situation was all about, referring to the receivership that had been established down here and then, of course, Mr. Bridges proceeded to explain to me. I mean, the substance, I think of what he told me is in that story that I wrote. I think it is pretty complete. I quoted him quite extensively there.

Q. Well, do you recall in your conversation with him that you made any reference to the telegram?

Mr. Katz: That is objected to upon the ground that it has already been asked and answered.

The Court: He may answer.

A. What you mean is, did we speak specifically about the telegram?

By Mr. Luddy:

Q. Let's back up just a little. Your instructions were to find out what that telegram meant, weren't they?

A. More or less what that telegram meant and what the situation was about. I mean, we assumed this telegram referred to this situation down in Los Angeles, and so that is what I wanted to find out about.

Q. Just as you got the telegram, and got it for the first time, your superiors knew you were getting it and you called [fol. 27] their attention to it and they instructed you to find out what it meant?

A. Yes, that is correct.

Q. Did you follow those instructions?

A. I found out what the trouble was in Los Angeles and wrote a story about it.

Q. Weren't your instructions to find out what the telegram meant?

Mr. Katz: I object to that upon the ground that it has already been asked and answered.

The Court: I think he has answered it. Awhile ago he said he was asked to find out, and he asked him and found out what the telegram was.

By Mr. Luddy:

Q. That is what your instructions were after you had gotten the telegram from Mr. O'Neil, were to find out what it meant?

A. My point simply is, that what they told me to find out about was the situation the telegram referred to, and that is what I did find out about.

Q. Did you ask Mr. Bridges what the telegram referred to?

A. I don't think I put the question that way, "What does this telegram mean?" I think I asked him what the situation was in Los Angeles. I think my questions were limited to that. I think he probably knew I had the telegram.

Q. Why did you assume that? That is what I want to get at. In your conversation you assumed Bridges knew [fol. 28] that you had the telegram, did you?

A. Yes, sir.

Q. What led you to assume that Mr. Bridges knew that you had the telegram? That is what I want to get at, Mr. Resner?

A. Well, I mean I supposed that anything coming from Mr. O'Neil at that time was authorized by Mr. Bridges' attorneys, so when I called him up, that was my assumption.

Q. And in the conversation——

Mr. Katz (Interrupting): Now, I move to strike out the answer as being a conclusion of the witness, and not binding upon the defendant.

The Court: Well, if it has any purpose, overruled. Motion denied.

Mr. Wirin: We assume the purpose is permitting him to state or show the knowledge of this witness.

The Court: Yes. I don't know just what Mr. Luddy is after, but I have a suspicion that he is trying to lay a foundation and the foundation he is trying to lay here is what the witness had in mind, so far as that goes.

By Mr. Laddy:

Q. I think you have already told us that in your conversation with Mr. Bridges you just assumed he knew you had the telegram. Is that right?

A. That is correct, yes sir.

Q. Now, in your conversation with him, did you make some reference indirectly or directly—or indirectly, to the [fol. 29] situation down in Los Angeles and the telegram he had sent to Madam Perkins?

A. Well, as I recall it, the extent of our conversation concerned the situation down in Los Angeles. I don't know that either one of us referred at that particular moment to the telegram because, as I say, I felt he knew that I had the telegram, or I assumed that he knew that I had it.

Q. Did you have a conversation with him later in which the matter was mentioned?

A. I mean, that is all the conversation I had that day.

Q. About the telegram?

A. About the story that appeared in the morning Chronicle.

Q. Did you have a conversation with Mr. Bridges after the story appeared, about the telegram, or in which the telegram was mentioned?

A. Do you mean, the following day?

Q. At any time after that?

A. Oh, I mean, I have had conversations with Mr. Bridges after those dates, yes.

Q. In which this telegram was discussed?

A. Well, as a matter of fact, I think the telegram was—well, I mean, that was something that happened on that day, and I think that is all our conversation concerned particularly, the situation in San Pedro. I mean, so far as—I mean, so far as I can remember—I mean, that wasn't—[fol. 30] that was the only day, so far as I can recall, that we were concerned with the telegram, because that was the basis for the story of that date and after that it was the situation that followed that telegram which was the things which were imporant to us. I mean, in whatever subject it was the telegram referred to and whatever might follow.

Q. What did Mr. Bridges tell you that night over the 'phone?

A. It is all in the story.

Q. That is to say that the matters which appear herein are a correct statement of what Mr. Bridges told you?

A. In substance they are correct, yes.

Q. We are referring now to People's Exhibit No. 2, which is your story of January 25, 1938?

A. That is right.

Q. The information upon which you based this story was received from Mr. Bridges, plus the fact that you received a copy of the telegram from Mr. O'Neil. Is that right?

Mr. Wirin: I object to that upon the ground that it has already been asked and answered, so many times, your Honor, and I object upon the ground that it is repetition.

A. Yes.

Mr. Wirin: I move to strike out the answer.

The Court: Yes, it may go out.

By Mr. Luddy:

Q. Any statements that appear in your story of January 27, 1938, which do not constitute quotations of the telegram [fol. 31] to Madam Perkins, were based upon information which Mr. Bridges gave you that night over the telephone?

A. May I see the story?

Q. Yes.

(Exhibiting document to witness.)

Q. Or other parts of the story, other than the quoted telegram?

A. Well, I think that wherever the story refers to Mr. Bridges, I think that——

Q. (Interrupting.) A little louder, because these gentlemen have to hear you.

A. I say, I think wherever I refer here to anything said by Mr. Bridges, I quote him. I don't think there is any paragraph where there is not a peg, or something.

Q. I call your attention to one paragraph which appears about three-quarters of the way down the column on the front page immediately following the sub-heading, "Mass Meeting. Bridges said he intended to leave here for San Pedro where members of the C. I. O. local intended to hold a mass protest meeting Wednesday or Thursday." Did Bridges tell you that over the 'phone that night when you were talking to him?

A. I think he told me that, yes sir.

Q. And the meeting was going to be a mass protest meeting and it was going to be held Wednesday or Thursday?

A. Yes, sir.

[fol. 32] Q. Now, I follow immediately after that which I have just read to you by reading further from the same article: "In further explanation of his telegram the longshoremen's president said, 'Judge Schmidt has actually ruled that the Port of Los Angeles will be tied up. This means the automatic tie-up of all other ports on the coast.' " And then you proceed to quote him further. You did receive that statement and you did mean that, I see, by placing it in quotes, received that information in your conversation with Mr. Bridges over the telephone before you wrote this story and before it appeared?

Mr. Wirin: I object to that upon the ground that it is leading and suggestive.

Mr. Luddy: I will withdraw the question.

By Mr. Luddy:

Q. I call your attention to that portion of your story which I have just read in which you proceed to place the quotation marks, preceded by the statement, "In further explanation of his telegram the longshoremen's president said," and so forth—reading that, is your recollection sufficiently refreshed so that you can tell us whatever appears in that article to be in quotations, is quoting Mr. Bridges on matters which Mr. Bridges stated to you over the 'phone that evening and which you placed in your story?

A. Yes, that refers to that conversation, and while those quotes are not letter perfect, I feel sure that is what Mr. [fol. 33] Bridges told me over the 'phone.

Q. Then everything that appears in the article which appears not to be quoting Mr. Bridges, although you say it is not letter perfect, is in effect what Mr. Bridges told you over the telephone while you were preparing the story?

A. Well, he told me on the evening I prepared the story, and this is the morning edition of the Chronicle.

Q. Now, when you state, "In further explanation of his telegram the longshoremen's president said," and then proceed to quote him, you understood when you received that statement from Mr. Bridges and he was giving that statement to you, it was in further explanation of the telegram sent to Madam Perkins, did you not?

Mr. Katz: I object to that upon the ground it is incompetent, irrelevant and immaterial. His understanding cannot bind the defendant.

Mr. Luddy: Pardon me?
The Court: Sustained.

Mr. Luddy:

Q. Now, will you please read that again. (Exhibiting document to the witness.) After reading that, can you now tell us whether or not it is a fact that you had a direct conversation with Mr. Bridges over the 'phone concerning that telegram to Mrs. Perkins?

A. You mean—well, as I say, I mean that those are my words there. I don't still recall—I mean, in our conversation we used the word "telegram" for instance. I might have [fol. 34] said there in further explanation of the Los Angeles situation. It is just a matter of putting a couple of words together, inasmuch as I had referred to the story here, it is probable and natural for me to explain it here, but I still can't remember in our conversation we were talking about this problem down in Los Angeles, and I can't remember the telegram.

Q. Do you know of any reason why a telegram to Madam Perkins would not have been referred to in your conversation with Mr. Bridges that night?

Mr. Wirin: I object to that on the ground that it has already been asked and answered.
The Court: He may answer.

A. Do you mean, why it shouldn't?
Q. Yes.
A. No. So far as I recall, there was no reason.

Mr. Katz: As a matter of fact the witness has said that he had the telegram and Mr. Bridges knew he had it and he didn't discuss it, so my objection should have been that it has already been asked and answered.
The Court: Surely.

By Mr. Luddy:

Q. Do you recall what Mr. Bridges did say to you that night concerning the situation in San Pedro or Los Angeles?

Mr. Wirin: My recollection of the matter is that that was [fol. 35] asked a while ago three or four times.
The Court: Sustained.

By Mr. Luddy:

Q. Do you recall attending a meeting which was held in the Bowl at Wilmington sometime in January of this year?

A. Yes, sir.

Q. Do you remember the date upon which that meeting was held?

A. It was sometime after the 25th—just the matter of possibly a week or a little less than that, I think.

Q. At any time had you been handling the writing of the stories which appeared in the Chronicle on the issue of Judge Schmidt's decision and the proposed meeting to be held at the Bowl in Wilmington? Had you been handling that matter for your paper?

A. I think that I probably did most of that, although I am not sure that I handled all of the story. I think some of the story following that came over the wire, either the Associated Press or United Press.

Q. Was there at this time a Mr. Eggleston connected with your paper?

A. That is correct.

Q. In what capacity?

A. Mr. Eggleston writes columns for the paper and he is recognized as our labor editor.

[fol. 36] Q. Does he have the title of labor editor?

A. I think that would be safe to say that that is his title.

Q. In other words, is he described in the by-line as a labor editor of the Chronicle?

A. They have. In the last several months Mr. Eggleston's work is confined to column writing and there is a column entitled, "Labor As Seen by Mr. Eggleston," and I think there was an article came out in the State Federation of Labor in which he was referred to as the Labor Editor.

Q. Do you recall the date at which the meeting was held in the Bowl at Wilmington?

A. No, but if you can show me a copy of the paper, I can recollect.

Q. I assume that you remember the day of the week the meeting was held down at Wilmington?

A. I am not sure. I think it was Friday.

Q. Did you have any conversation with Mr. Bridges prior to the time that the meeting was held here, and after the conversation you had with him on the evening when you were preparing the first story which I have asked you about?

A. I saw him before I went into the meeting, but I don't think that we—before he went into the meeting, but I don't recall any specific conversation. There was no conversation in which I took any subject of what he said for any [fol. 37] story. I mean, the story, when I got it down here, was the story of the meeting of the Wilmington Bowl.

Q. And did you have any conversation with Mr. Bridges over the telephone after that conversation you had with him that you have testified to and prior to the time the Bowl meeting was held?

A. I am not sure whether or not the day following—two days following the story about the wire that was sent to Madam Perkins—as to whether or not I can recall. We carried several stories. I think I did call him up to ask him whether it was correct that they were going to call this meeting, because I think when the story was sent from Los Angeles there was a few points Mr. Chandler wanted me to check and I did call Mr. Bridges.

Q. You recall calling Mr. Bridges and talking to him about that time?

A. Yes.

Q. What was the conversation with him?

A. I can't recall. I mean, I asked him if there was a story sent up from Los Angeles, referring to this meeting, and I mean, I think, when I talked to him originally—as to whether the meeting was being, or going to be held Wednesday or Thursday and he wasn't sure about that, and the office wanted me to find out exactly when the meeting was to be held, when, Wednesday or Thursday, and I guess it [fol. 38] was changed to Friday and I think formerly I asked him if he was going down to the meeting, and he said he was.

Q. Did you ask him what the purpose of the meeting was?

A. Well, I think the meeting was referred to in the stories that came up here as "stop work meeting".

Q. Did you ask Mr. Bridges for what purpose the meeting was?

A. Well, I think I did, and he said that that was what the meeting was about, to consider this problem down in the Harbor of San Pedro. I don't think I quoted him directly and it is difficult for me because I don't know but Mr. Bridges—I don't remember the exact connection in the conversation. If it is in the paper and I can read it, but I don't think in those stories I have quoted him directly and

so I wouldn't feel safe in saying I talked to him about any particular thing, but I did call him because I wanted to know when the meeting was going to be held and whether he was going down.

Q. Were you present at the entire meeting at the Bowl?

A. I think I was. I was present at most of it, although I did go out before the meeting and during the meeting looking for the telephone for the Western Union station that I might have to use.

Q. What time did the meeting start?

A. It was in the afternoon, I think probably around 2 o'clock.

[fol. 39] Q. How long did it last?

A. Oh, I think it lasted several hours, or two hours.

Q. Approximately how many people were there?

A. I think I mentioned in that story I wrote there 2500, or—although there may have been more or less than that, I think that is fairly approximate a total of the number of men in the place.

Q. Did anybody call the meeting to order; anybody preside, or anything like that?

A. I am not familiar with the officers of the local longshoremen's union, but I think it was one of them.

Q. Did you know any persons that spoke at that meeting?

A. Yes sir, Mr. Katz, Mr. Packard, Mr. Bridges, Mr. Schmidt—those are the four that I remember. I mentioned them in that story. Mr. Henry Schmidt.

Q. Who is Mr. Henry Schmidt?

A. He is the president of the San Francisco Local Longshoremen.

Q. Mr. Katz is the attorney here, or one of the attorneys associated with Mr. Wirin in this matter here?

A. That is correct.

Q. And Mr. Packard was the attorney associated with Mr. Katz?

Mr. Katz: John C. Packard, counsel in that case.

A. That is correct.

[fol. 40] By Mr. Luddy:

Q. Mr. Bridges spoke, did he?

A. Yes, Mr. Bridges spoke.

Q. Do you remember whether or not he was the last speaker on the program that day?

A. I do not recall that clearly. I think that Mr. Schmidt may have spoken after Mr. Bridges spoke.

Q. Do you remember what Mr. Bridges said at that time?

A. Well, in that story I refer to his speech, and I think I have quoted him briefly there.

Q. And when you say "that story", are you——

A. (Interrupting:) That is the one I wrote from the Wilmington Bowl.

Q. That is a story which appeared in an issue of the Chronicle of January 29th on the first page and under your by-line. Is that so?

A. That is correct.

Q. And had you written a story for your paper which appeared in the issue of January 28th—that is the day before the story appeared that you wrote from the Bowl at Wilmington?

A. I think I did. I think I wrote three stories while I was down here. I think I wrote one before and one after.

Q. Is the story which appears in the issue of Friday, January 28th on the front page under your by-line, the story written by you?

A. Yes, that is one of them.

[fol. 41] Q. Let's turn it over. I want to see it also.

A. That is the story I wrote on that date.

By Mr. Luddy:

Q. Tell us, as near as you can recall, what Mr. Bridges stated at that meeting that they held at the Bowl?

A. Well, I will say that I think that I included it in my story. What I wanted to get from Mr. Bridges—I quoted him only briefly. He spoke very rapidly, and in the first place they didn't seem to be talking about contempt there.

Q. What is that?

(Answer read.)

A. And I wasn't necessarily an invited guest at that meeting and I didn't feel safe in quoting Mr. Bridges extensively, because I do not take shorthand and I am not able to take a statement as it is dictated and I don't feel safe in quoting a person in that particular instance. I quoted him very briefly and I referred to his statements.

By Mr. Luddy:

Q. Well, of course, your training as a newspaper reporter trains you to——

Mr. Katz (Interrupting): I cannot hear you.
Mr. Luddy: I will withdraw it, then.

By Mr. Luddy:

Q. Will you say what Mr. Bridges said, as near as you can in substance and effect at that meeting, whether you can recall his exact words or not?

[fol. 42] A. I cannot recall his exact words. Can I see that story?

Q. Yes. I think you said, however, you quoted him only very, very briefly?

A. That is correct.

Q. But it is a fact, is it not, that he spoke for quite a few minutes?

A. Probably spoke about 15 or 20 minutes.

The Court: It is rather unusual where a witness is more careful about what he writes, than what he is going to say in court.

A. Well, this specific quote here (indicating), I can remember that. I mean, I remember the words "bread and butter". I mean, it so happens at that particular meeting I didn't take extensive notes. I was just sitting in the rear of the room and I didn't know the newspaper people were not invited. Usually in San Francisco at the union meetings, and particularly at longshoremen meeting- the press are included, and so I felt that was a situation down there. I had come 400 miles and I sat down in there near the door in the back row and started taking extensive notes and occasionally I would take out my pencil and jot them down and I didn't want anybody around there to stop me. Well, I was ordered to leave the office—I mean, the Bowl, so I didn't take extensive notes.

[fol. 43] Q. Are you talking now about a meeting at the Bowl? You are not talking about any meeting at the hall down there?

A. No, this was the Wilmington Bowl and it was the first time I had ever been there. I didn't feel very safe in writing the story and quoting Mr. Bridges in that story there. It contains everything I felt I could safely say; that is, without being inaccurate about anything, because I don't know whether you have ever heard Mr. Bridges speak or not, but he talks quite rapidly and unless I am prepared to take notes quite rapidly, I cannot catch them.

Q. Can't you recall anything at this time that was said particularly by Mr. Bridges at that meeting?

A. I can't recall anything beyond the quoted part that I attributed to him.

Q. Give us that. We don't have that.

A. I can give this to you. I mean, I can remember putting down that thing about bread and butter.

Q What about bread and butter?

A. "If the lawyers are handling the courts, we are going to go ahead and protect our bread and butter. There are lots of A. F. of L. unions don't go for that kind of stuff." There is a lot more here, and I wouldn't — safe in saying that I remembered anything else. I mean, in the interest of accuracy objectivity which the newspapers insist upon.

[fol. 44] By Mr. Wirin:

Q. What?

A. Objectivity, which the newspapers insist upon.

By Mr. Luddy:

Q. At the time you attended that meeting you wrote the story in the Chronicle of January 25, 1938, apparently page 7: "Longshoremen Call Stop Work Meeting." It is the 26th of January on page 7.

A. As I recall, I wrote this story, if this is one of the stories I looked up before I came down.

Q. One of the stories what?

A. That I looked up when I was served with a subpoena. I went back and looked through our files so as I could possibly—so as I would know what it was I was supposed to be questioned about, but I am quite sure I wrote that story; that is, if we look back in our ledger, I think I did.

Q. Now, do you recall the source of information upon which you based this story which appeared in the issue of the 26th headed "L. A. Longshoremen Call Stop Work Meeting"?

A. Well, as I recall, I think that was one of the Associated Press or United Press stories that I referred to the fact of the meeting down in San Pedro. In other words, they were going to call the stop work meeting, and we got the story up there. In the first place, Mr. Bridges was the national head of the union and we took and checked with his office and I recall I called him up there and asked him

if that was correct that they were going to call a stop work [fol. 45] meeting and he said yes, and I wrote that story there.

Q. I notice in this particular story on three separate occasions you quote Mr. Bridges. Where any statements appear to be in quotes in that article by yourself, from Mr. Bridges, it means, doesn't it, that Mr. Bridges made that statement to you in substance or effect, even if it is not letter perfect?

A. He said that statement to me, yes.

The Court: On three occasions there. Show him that statement. Did he make that, too?

Mr. Luddy: Yes. (Exhibiting document to witness.)

A. Oh, it is all a part of the same thing.

By Mr. Luddy:

Q. That is to say, anything that appears in this article in quotes as coming from Mr. Bridges represents statements that Mr. Bridges did, in fact, make to you before you caused the story to be published?

A. That is right.

Q. Did Mr. Bridges on or about January 26th, or January 25th, 1938, make the statement to you referring to stop work meetings called occasionally by the longshoremen as follows: "We called one here just before we affiliated with the C. I. O. in Seattle. We have an agreement with the ship owners to call them every Thursday at 6:30 a. m."

A. P. M.

Q. That appears in the article you just referred to. Did [fol. 46] Mr. Bridges make that statement to you in substance or effect?

Mr. Wirin: He said they appeared in the article.

The Court: Or in evidence.

Mr. Luddy: I think the best evidence is the witness' statement as to what he said.

A. As I recall, those were quotes I got from Mr. Bridges which I wrote in that story after I had talked with him.

By Mr. Luddy:

Q. Did Mr. Bridges advise you in the interview you had with him at the time you were getting material for this

story, that the Friday afternoon meeting was called by the local so that the entire San Pedro membership could attend, and Mr. Bridges was the scheduled speaker?

A. What is that? What do you mean? (Looking at paper). Are you referring to some particular paragraph.

Q. I am referring to the paragraph which appears to be the second paragraph under the sub-heading, "Receivership Postponed."

A. Yes, I quote Bridges. That is, I attribute that directly to him. I say that Bridges said the Friday afternoon meeting was being called.

Q. Keep your voice up.

A. I am sorry. Well, this paragraph here that you referred to says, "Friday Afternoon Meeting was called by [fol. 47] the local, Harry Bridges, president of the Pacific Coast Longshoremen said here (meaning San Francisco) so the entire San Pedro membership can attend." And I asked Mr. Bridges if he was going to go and speak there, and he said he was. I remember that.

Q. Did Mr. Bridges tell you in that interview that stop-work meetings are called occasionally by the longshoremen?

A. Well, I quoted him there as saying that.

Q. Did he make that statement to you?

A. He made that statement, yes sir, the statement I quote there.

Q. Did Mr. Bridges make a statement to you in that same interview that Judge Schmidt's ruling was an automatic order to close up every port on the coast?

A. May I see that, please? His reference there was to the receivership down here, and as I quoted him there, I feel safe in saying that is the quote.

Q. In other words, you are safe in saying are you, Mr. Resner, that Mr. Bridges on the 25th of January, 1938, in an interview that you had with him in which you were discussing the matter of this stop strike meeting that was going to be held at the Bowl, made the statement to you that Judge Schmidt's ruling was an automatic order to close up every port on the coast and that no one is going [fol. 48] to force the longshoremen back into the A. F. of L.?

A. Well, may I explain this just a little bit?

Q. You may.

A. As I say—I mean, my managing editor told me to be safe about what I said, and the point is, I was called down

here to testify as to certain things I had written and to say I had written them. That is correct, and everything I had in quotes there, I can stand by. That is the fact, but when I say Judge Schmidt, or say that Bridges protested the ruling, or something like that, I didn't put him in quotes, and as I say, we are always careful to do that. That is the reason for the quotations, so I don't know whether he referred specifically to Judge Schmidt or I don't recall that, and I won't be safe in saying anything he said except what was in quotes.

Q. In any event, you wrote the story immediately after you received the information?

A. Yes, right.

Q. And certainly your recollection as to any statements Mr. Bridges made to you was fresher then than now?

A. Everything actually in quotes I feel fairly safe in saying was accurate.

Mr. Wirin: May those articles be marked for identification so that we can have them?

Mr. Luddy: I intend to. I will present them all, so they [fol. 49] can be marked here. The witness, if the Court please, has already identified several articles and although he has stated direct from the witness stand that the matters appear therein, the statements were made to him, I think we should present them, not only in connection with the witness' testimony, but also with respect to the allegations in the pleadings with respect to these matters. We want to put in at this time, copies of the San Francisco Chronicle, or those portions rather, that have been marked, the issues of Friday, Saturday and Sunday, January 28th, 29th and 30th, 1938.

The Court: What is that, January 26th?

Mr. Luddy: I think there is one on the 26th. Do I have it here, Mr. Praeger?

The Court: January 26th will be People's Exhibit 2.

Mr. Praeger: 25th was People's Exhibit 2, if the Court please.

The Court: 25 is right.

Mr. Luddy: Here is the one on the 26th down underneath and it is the article which appears upon page 7 of the issue of the 26th. The particular article in each exhibit is marked however, so that it can be identified—is marked with blue pencil. I just want those portions that are marked.

The Court: Any objection to them being made as an exhibit together?

Mr. Katz: My objection is that this one is only a portion [fol. 50] of the article which the witness says contains quotations of Mr. Bridges, and they are not binding upon him, and the only portion of the exhibit which would be binding upon him should be limited to the quotation.

Mr. Luddy: No, I think not. I think the witness stated that Mr. Bridges made a statement, and whether it appears in quotes, or not, if he now makes the statement that Mr. Bridges made that statement and it appears in the article, it is just as effective.

(Argument.)

The Court: All right. The articles will be admitted for his testimony, as much as anything else, and the objections will be overruled. The issue of January 26th is People's Exhibit 3, and the issue of the 28th—I don't recall definitely whether he spoke about the 28th, but I think he did about the 29th.

Mr. Luddy: The 28th, I think is the story.

The Court: All right. The 28th, 29th and 30th will be People's Exhibit- 4, 5 and 6, and the next figure there will be 2 o'clock.

(Whereupon a recess was taken until 2 o'clock p. m. of the same day, Tuesday, September 6, 1938.)

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[fol. 51] Tuesday, September 6, 1938: 2 O'Clock P. M.

Lawrence Resner, resumed the stand:

Mr. Luddy: That is all on direct, Mr. Resner.

Cross-examination.

By Mr. Katz:

Q. Mr. Resner, as I understand your direct testimony, whenever a question arises which vitally affects the longshoremen operations, you call the C. I. O. office, do you, in the ordinary course of your business to get some information about that question?

A. Well, if I am the one person to do that. I am one of a number of reporters and some of the others have done that too. I have done it quite often, myself.

Q. Do you know that is the custom in obtaining information of the C. I. O.?

A. Generally, yes.

Q. Did Mr. Bridges or Mr. O'Neil first call you to give you any information?

A. I think—(hesitating).

Q. I will reframe the question. Did Mr. Bridges call you first, or did you first call Mr. Bridges?

A. I think I testified the way this story first came to our [fol. 52] attention was that when the News came out there was a story on the telegram and our city desk noticed that, and I think asked me to check with the C. I. O. on that story and I called up Mr. O'Neil.

Q. Did Mr. Bridges tell you to write any story, or was it your superior who told you to write the story?

A. My superior.

Q. Did Mr. Bridges ask to give you any information at all?

A. No.

Q. And whatever statement Mr. Bridges made, did he give them in answer to your questions to him, substantially?

A. When I called him up, I asked him about this situation, if he could tell me what that was about, and then he proceeded to tell me, and I questioned him about a couple of things that weren't clear to me asking for information, but more or less he gave the information to me after I asked him to describe it.

Q. Now, do I understand your testimony to be that the matters within the statement, or the statements in quotations are, in substance, what Mr. Bridges said?

A. I said they are not letter perfect, but in substance what Mr. Bridges said, yes.

Q. In one of these articles a meeting is referred to as a protest meeting. Do you recall Mr. Bridges using any lan- [fol. 53] guage in referring to that meeting, except to say that it was a "Stop work meeting"?

A. Do you mean—which meeting is that?

Q. Well, in one of these articles you refer to the meeting as a "Protest meeting," and I want to know whether the words, "Protest meeting" is your language, or the language of Mr. Bridges, for in your article you refer to it most generally as a "Stop work meeting."

A. I testified that in these Associated Press stories that came up from San Pedro—it may have been United Press

story, that the story referred to that as a "Stop work meeting," and I called him up to ask him if that is correct, that is what it was, and he said yes. Of course, he explained.

Q. You don't know whether Mr. Bridges called it a "Protest meeting"?

Mr. Luddy: Just a moment. He hadn't finished his answer.

A. I was simply going to say he referred to this here as a "Stop work meeting".

The Court: He is asking whether they were Mr. Bridges' words, or not, "The protest meeting"?

A. Which story there?

By Mr. Katz:

Q. The article in connection with the alleged statement of Mr. Bridges where he is alleged to have stated it was a "Protest meeting".

[fol. 54] A. You have two different statements there. I think you are referring to the original story. I am not sure.

Q. January 25, 1938. Am I right in presuming, because it is not quoted, that this is only your language, "Bridges said he intended to leave here for San Pedro where members of the C. I. O. local intend to hold a mass protest meeting beginning Wednesday or Thursday." That is not quoted. Is that your language?

A. That is my language. I have not quoted in there. I mean, I don't know whether he used the word "protest" or not. I don't recall that, although he may have. I can't say with certainty that he did.

Q. Did you tell Mr. Bridges that the information which he was giving to you in answer to your question in San Francisco was going to be put on the Associated spike and released in other places besides San Francisco?

A. Well—(hesitating).

Q. You can answer that yes or no.

A. No, I didn't tell him anything like that.

Q. Did Mr. Bridge give you any instructions about releasing that information, otherwise than in San Francisco?

A. No.

Q. And when you called up, you called on behalf of the San Francisco Chronicle?

A. That is right.

Mr. Luddy: That is objected to upon the ground that it is immaterial.

The Court: Overruled.

A. He never gave any instructions on any publicity.

By Mr. Katz:

Q. Did he give you any instructions on this telegram?

A. Never.

Q. Did you determine what matters were to be published?

A. Yes. Let me make it a little clearer the way we do business up there. We set up a publicity office to take care of pamphlets and releases and everything for all affiliated C. I. O. unions, and my office is the only one to determine what goes out, because there are times when [fol. 79] Mr. Bridges may be absent a month and a half on business and naturally, we can shut up shop during times like that, and it is all determined by me.

Q. Did you do anything with relation to this telegram that you had not done at other times in your business with the news business of the C. I. O.?

A. Straight routine—followed the straight routine of all telegrams and correspondence.

Q. Did you have any conversation wtih Mr. Bridges before you released the telegram to the newspapers?

A. No, I did not.

Q. Now, I presume you could have, but did not contact either the Associated Press or United Press that night, did you?

A. I didn't contact either one of them.

Q. When you really seek to get a great publicity break, as a newspaperman, you do contact the Associated Press and United Press, do you not?

A. I usually get the wire services first in a case like that, but you see down here where the story was breaking in San Pedro the Longshoremen's Local has a new service of its own and we don't attempt to supercede them.

Q. Did you send copies of telegrams to the Los Angeles newspapers?

A. I never send anything down to Los Angeles.

[fol. 80] Q. Did you send a copy of the telegram to anybody in Los Angeles?

A. I did not.

Q. The only newspaper that you called was the local San Francisco News. Is that correct?

A. That is correct.

Q. Now, you said something about one of the reasons for the existence of a publicity department of the C. I. O. was because you wanted to get the facts concerning the C. I. O. before the public truthfully. Do I understand you correctly?

A. That is correct.

Q. Will you explain that a little further?

A. Well, since the C. I. O. started here on the west coast we have had great difficulty in getting the truth about our aims and activities in the papers. Those papers who didn't distort them are more or less inclined to leave them completely out of the paper—no news at all, but various excuses were given why they couldn't get in contact with us, and it is a new and up to date way of doing business when you have an organization like we have, to have a publicity man who can find out what the facts are.

Q. Was it your experience that the public somehow managed to get the information about the C. I. O. anyway; has that been your experience, that it usually got [fol. 81] out and usually was garbled in some manner?

A. Yes, for instance during the strikes there wasn't a telegram that went out of the unions over the entire Pacific Coast that didn't leak out almost before the man to whom they were sent received them, and we know that all of our 'phones have been tapped, and we know all that was going out up there.

Q. Is there an established policy of the C. I. O. that all correspondence—important correspondence should go to the press; correspondence which you felt was important?

A. I don't understand the question.

Q. Do you know whether there was a policy overe some period and duration to the effect that all of the important correspondence which you consider to be noteworthy, or newsworthy, involving appeals to public officials, that such appeals should be made public?

A. Oh, yes, always has been, on numerous occasions.

Q. Can you give us any examples when that policy was pursued?

A. Yes, the C. I. O. released telegrams to the press in connection with the vigilantes activities at Westwood in connection with the beating of the miners at that time at Nevada City and in connection with the reign of terror in

New York City, and in connection with the reign of terror [fol. 82] in the gulf area at New Orleans.

Q. Did they all involve policies whereby telegrams were made public?

A. Yes, we wired to the Congressmen of the Government on various occasions. Madam Perkins and various Government officials many times.

Mr. Katz: I think that is all.

Redirect examination.

By Mr. Luddy:

Q. Did you ever help Mr. Bridges formulate any telegrams, or discuss the contents of proposed telegrams?

A. No, never. Mr. Bridges usually handles his own.

Q. You have stated that this publicity bureau was set up, and the reason for setting it up. Under whose authority was this bureau set up and created, do you know?

A. You said, "Whose authority"?

Q. Yes.

A. Under the authority of the director of the west coast C. I. O., Mr. Bridges.

Q. And the functions of the bureau were discussed with Mr. Bridges at the time he authorized the setting up, and in fact set up the bureau, were they; that is, the purpose it was to serve?

A. Yes sir, certainly.

[fol. 83] Q. That was all discussed with Mr. Bridges?

A. Yes.

Q. The mechanics as to how it was to operate was discussed with Mr. Bridges.

A. He pretty much left the mechanics to me.

Q. I know, but when you were getting it set up and discussing the purposes and functions it was discussed generally with him, wasn't it?

A. Not anymore than in just a general way. He put me in charge and told me to run it and held me accountable.

Q. He said, "O'Neil, you are in charge of this and you are personally accountable." Is that it?

A. That is the idea.

Q. Assuming that there was a telegram, either received by Mr. Bridges or dispatched by him, if it was a telegram which Mr. Bridges did not want released by the press, it wouldn't come from his office to your desk?

A. I couldn't say about that.

Q. You don't know of any telegrams he didn't want released that were not sent to your desk as a matter of routine?

A. Every day any telegrams on my desk that weren't to be released—if it wasn't to be released, it wouldn't be sent to the bureau.

Q. As a matter of fact, if Mr. Bridges didn't want it [fol. 84] released, it wouldn't come to your desk?

A. Not at all.

Mr. Luddy: That is all.

Recross-examination.

By Mr. Katz:

Q. You mean, no telegrams have come to your desk that you didn't publicize?

A. Oh, yes.

Q. That is, you determine what is to go out?

A. That is correct.

Q. You do know of instances of telegrams which involved very private activities coming down to your desk and you did not publicize them?

A. That is correct.

Q. Now, do you know of the existence of any requests upon the C. I. O. by Government officials soliciting notice from the C. I. O. concerning any impending labor difficulty? Is that question clear?

Mr. Luddy: That is objected to upon the ground that it is not proper cross examination and it purports to assume some allegations which appear in the answer and it seems to me to be entirely out of order at this time.

The Court: Even so, this witness is going back to San Francisco. You may answer it.

[fol. 85] By Mr. Katz:

Q. Is that question entirely clear?

A. No, I am afraid it isn't.

Q. Do you know whether Government officials have, from time to time, requested that the C. I. O. notify them of any impending labor difficulties on the west coast?

A. Yes, we have had cases of that when they wanted to be kept informed of what was pending out here, whether there was a contemplated tie-up or one thing or another.

Mr. Katz: That is all.
Mr. Luddy: That is all.

By the Court:

Q. The newspaper story I noticed on January 24th it didn't contain a telegram. You gave it to them, I understand, directly?

A. I believe I did read that telegram over the 'phone to them, Judge. They just didn't have the space at the time.

By Mr. Luddy:

Q. By the way, this story you gave the newspaper, the newspaper was just going to press at the time?

A. From the place it was placed in the paper, I would say they were just about to go to press.

Mr. Luddy: That is all. Mr. Katz, I would like to have you take the stand and ask you a few questions.

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[fol. 86] Monday, September 12, 1938; 2 o'clock P. M.

(After recess).

Harry R. Bridges, having been called as a witness, in his own behalf, and having been first duly sworn, testified as follows:

Direct examination.

By Mr. Wirin:

Q. What is your occupation?

A. President of the International Longshoremen's and Warehousemen's Union.

Q. How long have you been president of that organization?

A. Since its inception as the International Longshoremen's & Warehousemen's Union, and prior to that time, when it was The International Longshoremen's Association.

Q. What are your duties as President of that organization?

A. That would require some description of the organization. Of course, the organization is a coast organization

with locals on the Pacific Coast, in continental United States, British Alaska, Hawaii, as well as the East Coast and South Atlantic Coast.

Q. How many members, approximately, are there, or [fol. 87] were there in January, 1938?

A. Of the International Longshoremen's and Warehousemen's Union, around 28,000.

Q. How many members were there, approximately, on or about the 28th day of January, on the Pacific Coast?

A. Around 13,000. Just a minute. Around 23,000. I thought you meant Longshoremen members in the first place.

Q. Do you hold any office in that organization?

[fol. 88] A. I am the West Coast Director.

Q. And how long have you been a longshoreman?

A. Since 1922.

Q. Now, in connection with the sending of the telegram which was set forth in the papers here as having been dispatched by you on or about the 24th day of January, 1938, tell us when and under what circumstances you first learned of Judge Schmidt's decision in the case, which has been called here "The Walker Case"?

A. I am not quite sure whether I first learned of it through the newspapers or through long distance phone call from San Pedro. I think my first recollection—my best recollection at this time; the first time I definitely got the official information was through a phone call on the Monday I sent the telegram.

Q. Did you send a telegram on the same day that you first received that information?

A. To the best of my recollection, yes.

Q. Now will you describe to the court what you did with respect to the sending of this telegram?

A. Well, I wired the—I drew up the telegram.

Q. Did you dictate the telegram to your secretary or some person in your office?

A. I just dictated the telegram to my secretary and asked her to send it along with the other telegrams.

Q. Did you, at the same time, send a telegram with re- [fol. 89] spect to some subject matter to any other persons?

A. I sent it to the President of the Maritime—Chairman of the United States Maritime Commission, and the National Labor Relations Board.

By the Court:

Q. Do I understand this is the same telegram, or another telegram?

A. Substantially the same.

By Mr. Wirin:

Q. Had you, prior to the time you dispatched the telegram on January 24, 1938, to the Secretary of Labor; had you prior to that time had any communications with the Labor Department with respect to any labor matters?

A. Many times.

Q. And will you give us the circumstances of the occasions under which you communicated with the Department of Labor prior to that date?

A. Well, in answering the question——

Mr. Luddy (interrupting): May it please the Court, that is objected to upon the ground that the charge is not that there was any attempt committed in having sent a telegram to Madam Perkins nor anybody else, and all that is material is that it was released for publication, and therefore, any telegram he may have sent to Madam Perkins or anybody else is immaterial.

The Court: Give me the exact question.

(Question read).

Mr. Wirin: The purpose of the question——

[fol. 90] The Court: I am not interested in that so much as I am in the fact that you are going into the history of communications here.

Mr. Wirin: It will be very brief.

The Court: You may answer it.

A. In the first place, after 1934 when our organization was fully completed—since that time we have been in constant touch with the Department of Labor and we have a definite working understanding with the Department of Labor and also other government agencies that at any time a tie-up is looming, expected, they wish us to notify them either by long distance phone, by their representatives on the coast here, which they have three or four of, or directly to the Secretary, herself, or her assistant, and it has always been our custom, and the duty of myself as the head of our organization to immediately contact the Department of

Labor, and they have requested us to do this in many cases. We have had the same request from the President, also.

Q. With respect to the Department of Labor, without going into it and consuming considerable time, will you give us examples where the Department of Labor have taken, or shown concern and taken action with respect to any longshoremen's difficulty.

Mr. Luddy: That is objected to on the ground that it is immaterial. It is only with the publicity given to the telegram that we are concerned, and it is immaterial.

[fol. 91] The Court: Overruled.

By Mr. Wirin:

Q. Will you answer the question?

A. There would be many instances. I—I can recall a few off-hand. After 1934, the latter part of 1934, and all during 1935 and in the middle of 1935 we were sent back to Washington to a conference with the President, and in 1936 and on two or three occasions in 1936—of course, winding up with 1936 with the maritime strike that the assistant Secretary of Labor took charge of and came out here; and on two or three occasions the Department of Labor has consulted me with regard to the particular jurisdiction in dispute and A. F. of L. and C. I. O., since we changed over, and I have given them full information on it and what I thought might happen, because they always wished to know, and the last time was just four or five days ago when the National Maritime Labor Board again sent out a telegram asking my opinion if trouble was going to develop. That is the newly created National Maritime Labor Board, apparently taking it over from the Department of Labor.

Q. During these particular instances have you sent telegrams to the Department of Labor?

A. Yes, communicating either by telegram or long distance phone, or by talking to one of the representatives.

Q. Will you tell us briefly under what circumstances and on what case you received requests from the Department of Labor for information or for a report concerning the labor [fol. 92] difficulties?

Mr. Luddy: That is objected to on the ground that it is immaterial. It is only the matter of the publication of the telegram to Madam Perkins that is material.

The Court: That isn't the only thing. He may answer the question.

A. On any occasion when a labor dispute is liable to cause a strike, the Labor Department sends out regular question-aires to the various unions to fill out, and I get them regularly and always—although it is not compulsory to fill them out, we do as a matter of cooperation—as to what is the dispute, and the number of men involved at any time in any dispute looming up, or a tie-up, we get a request from the Department of Labor. The question-aire asks whether it will be a long dispute, and we always answer as best we can.

Q. Do you recall on or about January 24, 1938, whether you had any conversations or conferences with any representatives of the Water Front Employers' Association, and if so, who?

A. January 24th was two or three days after the Court ruling was made. That is correct?

Q. That is correct.

A. I think it was on that day, so far as I can remember—I think it was on that day I had a conference with Mr. Armond Roth, President of the Water Front Employer's Assn.

Q. How long has he been the President of the Water Front Employer's Association?

[fol. 93] A. Almost two years.

Q. Will you relate the substance of the conversation?

Mr. Luddy: That is objected to as immaterial and absolutely hearsay.

Mr. Katz: What we intend to prove is what Mr. Bridges did and said under the contract. May we *made* an offer of proof?

The Court: Overruled. He may answer.

A. Well, it is natural, of course, as Mr. Roth is the Coast President of the Employer's Association acting in this jurisdiction and I am the Coast President of our organization, and any dispute that arises with any of the locals, he contacts me or I contact him, and I forget whether this particular conversation came about through him calling me first, but it was particularly about the stop work meeting to be held and I explained to him that the man and the officials were doing the only thing they could to straighten out the matter so the men could stay on the job, and he said:

"Well, I just want to notify you that we intend to proceed against the union for damages for the delay it is causing the ships, and so forth," and I asked him what his position on the Court Order was, and he said, "We can't take a position one way or the other." And I said, "I can't see where this leaves us, because, as we view the court order, the men in San Pedro will be locked out." So far as what he said on that, he said, "It may mean that," and he recognized might mean that, but he said, "We can't [fol. 94] interfere one way or the other or we will be violating the Wagner Act, which would be worse that what you fellows are up against." So we didn't get very far in the conversation, but we recognized it could cause a tie-up on the whole Pacific Coast.

Q. Did your conversation with Mr. Roth, whatever its nature was, have anything to do with the dispatching of the telegram to the Secretary of Labor and other officials you have mentioned?

A. Well, it was a factor.

Mr. Luddy: Just a moment. That is a question that can be answered "yes" or "no" and leave me an opportunity to object. It simply asks if the conversation had anything to do with it.

A. The answer is "yes."

By Mr. Wirin:

Q. What was the relationship?

A. The Labor Department is a third party to our contract.

Mr. Katz: That is in already, your honor, by reference. Proceed.

A. (Continuing): Over a period of years, or over quite a long period there has been a constant stream of complaints from our employers to the Labor Department, complaining that we were not conforming to our contract; that we were violating our contract. In some cases these complaints worked against us and naturally, after talking to Mr. Roth, and in view of the other factors in the case, and, of course, the Labor Department is really a third party to our contract and that definitely had a part in the [fol. 95] sending of the telegram.

Q. Now, let me return with you to the situation with respect to the sending of the telegram. I believe you testified you dictated it to your girl. Now, will you tell us as well as you can remember now, what happened to the telegram and what you did with it after you finished dictating it to your secretary?

A. It is really hard for me to remember specifically. We sent a lot of telegrams, and we write a lot of letters and I guess it was handled just as we always do; I told my secretary to take the telegram and send it.

Q. Do you recall what you, yourself, did with the telegram?

A. That was the end of it, so far as I was concerned.

Q. Did you ever, at any time, hand the telegram over to Mr. O'Neil?

A. Not to the best of my recollection at this time.

Q. Did you have any conversation with Mr. O'Neil about the telegram?

A. Not that I can recall.

Q. Did you give any directions or instructions to Mr. O'Neil as to what he should do with the telegram?

A. No, I can't remember that I am pretty sure that I never gave him any definite instructions.

Q. Now I call your attention to the text of the telegram. Now, I call your attention to the following sentence: "Attempted enforcement of Schmidt decision will tie up Port [fol. 96] of Los Angeles and involve entire Pacific Coast." I will ask you to explain that in terms of what you had in mind when you sent the telegram; what you meant by that statement.

Mr. Luddy: I submit that the statement speaks for itself, and I object to it on the ground that it is calling for a conclusion of the witness.

The Court: I am going to suggest that counsel may stipulate that what he says in his affidavit may be accepted as an explanation of the telegram.

Mr. Katz: Yes, we will accept that stipulation.

Mr. Luddy: Yes, your Honor, You- Honor is referring to the so-called Bridges affidavit?

The Court: Yes, the one that is referred to in count one.

Mr. Praeger: Referred to in count one?

The Court: Yes.

Mr. Luddy: As we understand it, your Honor proposes

the stipulation in lieu of the question just asked; that it may be stipulated that the explanation which he made in there as to the tie-up and so forth, the meaning of that is as set forth in the Bridges Affidavit.

The Court: That is correct; the explanation he has already given in the affidavit.

Mr. Luddy: That is correct.

The Court: Satisfactory to both sides?

Mr. Wirin: Yes.

The Court: I understand that it is, from the direction [fol. 97] in which the heads move.

By Mr. Katz:

Q. Now, let me ask you to tell the Court in a general way, so far as the procedure of your office is concerned, what communications or matters came to the desk of Mr. O'Neil?

A. Practically all of them, unless small matters—he won't get bills, or minor communications of minor importance, but any important matters, at some time or other all go over Mr. O'Neil's desk. Of course, I might explain it this way: We have a publicity man and he is supposed to be the expert on that—not me, of course,—and it is necessary, we have found, to have a good publicity man and he has got to know the background of the situation and what is going on along behind the scenes and have a right to publish, or otherwise it is mechanical only, and if he is asked questions, he can't answer them. We kept no secrets from Mr. O'Neil, and he is in charge of that department and very few communications of any importance, or anything of importance, ever went through my office that Mr. O'Neil doesn't see them at some time or other.

Q. Were all communications directed to Mr. O'Neil's desk limited to communications that required publication?

A. No, not by any means.

Q. Then, give us some example of matters that would come to Mr. O'Neil's desk in the ordinary routine that were not for publication?

[fol. 98] A. Well, we have many labor disputes come up; we might have a dispute in the northwest and I might wish them to adopt a certain kind of strategy against the employers; for example, well, we don't turn this over to Mr. O'Neil directly, but we turn it over in some other way. We don't expose the matter to our employers. So these matters

would not be published and O'Neil knows that, and communications of that type would be sent to him for his information; not for publication, so he is informed at all times.

Q. With respect to communications which reach Mr. O'Neil's desk, who determines whether or not they will be [fol. 99] published and what publicity shall be given to them?

A. O'Neil is given full charge. I might say we try to handle our organization that way. We don't hire a publicity expert and then tell him what to do, or have him told by people who are not publicity experts, and I am not a publicity expert.

Q. Now, with respect to the sending of the telegram to Madam Perkins, I call your attention to the date of January 2[illegible]. What was your information, if any you had, on that date at the time you sent the telegram as to whether or not a motion for a new trial was pending, or had been filed?

A. I never knew a thing about it.

Q. What was your information at that time as to whether or not a proceeding had been filed to vacate the appointment of a receiver?

A. I knew nothing of it.

Q. And what was your information at that time concerning the filing, or the pendency before Judge Schmidt of a motion to vacate the permanent injunction entered by Judge Schmidt?

A. So far as I remember, I knew nothing of that either. We—well, we have our attorneys in Los Angeles, and we have our attorneys in San Francisco, and we have enough work to do without trying to do their work. We leave them to take care of those things.

Q. Now, when you sent the telegram to Frances Perkins, [fol. 100] did you intend by the sending of that telegram to influence Judge Schmidt with respect to any matters pending before him?

Mr. Luddy: That is objected to as being immaterial, as to the statement of his intention. The telegram and the circumstances under which it was published speak for themselves.

The Court: The question had to do with the question of the sending of the telegram.

Mr. Katz: I will follow that up as to device, or conspiracy.

The Court: The witness understands just the sending of the telegram and what?

The Witness: What was the quesion?

The Court: The answer is "No."

The Witness: I don't remember the question. At least, I thought the question——

Mr. Katz: Read the question.

(Last question read.)

A. The answer is no, we weren't even thinking of the Judge at that time.

By Mr. Katz:

Q. Now, under what circumstances, as best you now recall, did the telegram to Frances Perkins get in the newspapers? Now, with respect to this, let me change the question for a moment. You were in court when Mr. Resner testified as a witness, were you not?

[fol. 101] A. I was.

Q. With reference to your conversation with Mr. Resner over the telephone, do you recall in the first place, whether or not you communicated with him, or he communicated with you, which resulted in that telephone conversation?

A. I couldn't say specifically, but my impression is that he communicated with me, because he generally does. I don't call him up.

Q. What is you best recollection as to whether or not any reference was made in the course of that conversation concerning the telegram to Frances Perkins?

A. I couldn't recall specifically, but if I heard Mr. Resner's testimony and if Resner says that he called me up to ask me about the telegram or the general situation, I would say that that is the truth of the matter, but I cannot recall specifically what he said or what his ultimate remarks were when he called me up.

Q. Well now, let me ask you did you, when you sent the telegram to Frances Perkins, or in any connection or step that you took with respect to that telegram, intend to warn Judge Schmidt that a tie-up would result so as to induce him to change his mind?

Mr. Luddy: That is objected to for the reason that the question, whether he had a specific intent to warn Judge Schmidt, is immaterial and the lack of a specific intent, if

[fol. 55] Q. You didn't state you were also acting, did you, for the Associated Press carrying news throughout the country?

A. I never did that. The Chronicle works for itself.

Q. Now, I believe you mentioned the names of Mr. Katz and Mr. Packard, Mr. Bridges and Mr. Schmidt as speaking at that meeting. Do you recall whether Mr. Roy Donnelly spoke?

A. I think he did, although I cannot remember a word that he said.

Q. Do you recall whether a Mr. Bowen and Mr. Brown spoke?

A. Well, there were several, as I understood, officials of the Longshoremen's Union that spoke there and I was not familiar with their names, and there were several other speakers and I am not sure whether those were the ones.

Q. You were advised that this meeting had been closed to the public, were you not?

A. That is my general understanding, and I attended Longshoremen meetings before and they told me always to keep the newspapers out of their meetings, or newspaper men, I guess.

Q. Did I understand you correctly, Mr. Resner, when you say that you got the understanding that it was a mass protest meeting from what you read in the Associated Press wire?

A. You are referring to two different stories. In this original story, the one the morning of Tuesday, January 25th, which is the original story that contained most of the text of the telegram to Secretary Perkins, I see here where [fol. 56] I refer to this as a mass protest meeting, and I said I don't recall whether he said that it was a mass protest meeting or not. It seemed to be my understanding it was. However, on this meeting several days later, the stop work meeting, my first idea that it was a stop work meeting came from the wire that I had read that day, and I called up Mr. Bridges to ask him if that was what it was, a stop work meeting.

Q. What did he say?

A. He said yes; that is, he said it was a stop work meeting.

Q. Having attended that meeting you know, as a matter of fact, it was a stop work meeting?

Mr. Luddy: That is objected to upon the ground that it is calling for a conclusion of the witness.

The Court: If it is going to be important, I would like to have somebody tell me the difference between a stop work meeting, and a protest meeting.

Mr. Katz: We can, your Honor, but I will agree that this is not the man to do it. I will withdraw the question. That is all.

Redirect examination.

By Mr. Luddy:

Q. You said, with respect to this first story and the interview you had with Mr. Bridges with respect to the first story, that you didn't print anything he asked you not to [fol. 57] print. That is correct, is it not?

A. That I didn't print anything he asked me not to print?

Q. You were asked the question in Mr. Katz's cross examination of you.

A. That is correct.

Q. Now, it is a fact, is it not, that nothing that appears in the story of Tuesday, January 25th, by you, as credited to Mr. Bridges, which Mr. Bridges told you not to print?

A. You mean, anything in here (indicating)?

Q. That you have credited to Mr. Bridges, represents matters that you got from Mr. Bridges in this interview, and none of this represents any matter that he told you not to print?

Mr. Katz: To which we object upon the ground it is incompetent, irrelevant and immaterial. I don't think a person has a right to go that far in connection with the case.

Mr. Luddy: I will withdraw the question. I think we have a little foundation that might make it a little clearer.

By Mr. Luddy:

Q. You knew Mr. Bridges, did you not, before Tuesday, January 25th, or Monday, January 24th?

A. Yes.

Q. You had been a newspaper reporter on the Chronicle how long before that time?

A. Between two and three years.

[fol. 58] Q. And you had frequently before January 24, 1938, covered labor matters in which Mr. Bridges was interested, had you not?

A. Yes.

Q. And I suppose on a large number of occasions prior to January 24, 1938, had interviewed Mr. Bridges in your capacity as a reporter for the Chronicle?

A. That is right.

Q. And had, as a result of your interviews prior to this date, they appeared as a matter of routine in your paper, did they?

A. Yes.

Q. I take it there was no question but that Mr. Bridges knew you were a reporter for the Chronicle when you called on him to interview him?

A. I am sure he did.

Q. During the course of that interview you had with Mr. Bridges that night, did he give you any information and then ask you not to print it?

Mr. Katz: I object to that upon the ground it is incompetent, irrelevant and immaterial.

The Court: Objection overruled.

A. I don't recall any specific instruction like that. I think that when I quoted him in here, I quoted him correctly. I don't recall him telling me anything like that.

[fol. 59] By Mr. Luddy:

Q. Then may I say here, that anything that you have printed in that article is matter that you got from Mr. Bridges, and matter he gave you without the request that you not print it?

A. Everything in quotations—that appears in quotations, was given me by Mr. Bridges, and so far as I know there was no restriction on printing it.

Mr. Luddy: That is all.

Mr. Katz: That is all.

Mr. Luddy: That is all, Mr. Resner.

The Witness: Am I all through, now?

Mr. Luddy: I think you may be excused, so far as we are concerned. Do we want Mr. Resner?

Mr. Ashburn: I don't think so.

The Court: You may be excused.

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[fol. 60] Arthur Eggleston, called as a witness by the People, being first duly sworn, testified as follows:

The Clerk: State your full name, please.

A. Arthur Eggleston.

The Clerk: How do you spell the last name?

A. E-g-g-l-e-s-t-o-n, Eggleston.

Direct examination.

By Mr. Luddy:

Q. Mr. Eggleston, where do you reside?

A. In Berkeley.

Q. And you are a newspaper man employed in San Francisco by the Chronicle, are you not?

A. Yes, sir.

Q. And how long have you been employed by the Chronicle?

A. Since March, 1936.

Q. During January of this year and prior thereto, had you conducted a column which appeared daily in the Chronicle?

A. Yes sir, six times a week.

Q. And in connection with your writing for that paper, had you prior to January 25, 1938, had occasion to interview Mr. Harry Bridges?

A. On several occasions.

Q. And on any occasions that you had to interview Mr. [fol. 61] Harry Bridges with respect to labor news had he, on occasions, referred you to anybody else as a source from which you might get answers to questions you asked?

A. Yes, sir.

Q. To whom had he referred you?

A. Well, O'Neill, the publicity man.

Q. On how many occasions would you say that prior to on or about January 25, 1938, Mr. Harry Bridges referred you to Mr. O'Neil, the publicity agent for the C. I. O. and you asked Mr. O'Neil for information which you were seeking?

A. Well, I couldn't say the number of times. I might explain it this way; that I would try first to contact Mr. Bridges, and perhaps it was with respect to a matter in which a release was to be made, in which case, if the release was being prepared, or had been made, he would refer me to Mr. O'Neil as the man to release it.

Q. Are you able to give us any estimate at all as to the number of times you were referred to Mr. O'Neil by Mr. Bridges prior to on or about January 24, 1938?

A. No. It would be a pure guess. Probably more than once, however.

Mr. Luddy: I guess that is all. Just a minute.

By Mr. Luddy:

Q. Would you say that it might have been as many as a half a dozen times?

A. Well, if I knew about the time that they set up their [fol. 62] publicity bureau, I could probably say I think it was. I think up to January 25th it had probably been in existence a number of months, and it is entirely possible I might have been referred to Mr. O'Neil that many times by——

Q. By Mr. Bridges?

A. Perhaps.

Mr. Luddy: That is all.

Cross-examination.

By Mr. Katz:

Q. You say you might have been referred, but you are not sure you were referred. Is that correct?

A. I can only say this, that I know that at least once, and maybe a couple of times I would contact with Mr. Bridges with respect to some matter—for example, the A. F. of L. lumber boycott that was on, and if the C. I. O. was going to have anything to say about this, and perhaps, as I assume, Mr. Bridges had prepared a release which was to be issued through Mr. O'Neil and I was told that Mr. O'Neil had the release.

By the Court:

Q. By "release" you mean a newspaper story?

A. Yes, there statement of their official position in the matter.

By Mr. Katz:

Q. In the parlance of the newspaper world the C. I. O. [fol. 63] and Mr. Bridges are news?

A. Yes.

Q. And newspapers are constantly after his office for information. Is that correct?

A. That is right.

Q. And you say it is a routine matter, or a matter which has been going on a considerable period of time, for newspaper people to call the C. I. O. to attempt to get Mr. Bridges and the publicity department to ask about the C. I. O.'s position on an issue where the longshoremen are concerned?

A. That is correct. I had been doing it long before the C. I. O. was in existence.

Q. And you continued to after?

A. Yes.

Q. And what happened with respect to this story would you say was any different than what happened in respect to other stories in which the C. I. O. was involved?

A. You understand that I didn't cover this story that is at issue here.

Q. From your experience as a member of the Chronicle staff, and from what you know about this situation and other situations in which the C. I. O. was interested, would you say the same general pattern was followed?

A. I think so.

Mr. Katz: I think that is all.

[fol. 64] Redirect examination.

By Mr. Luddy:

Q. You have any recollection at the present time of previously having had a matter come up in which a telegram was sent to Mrs. Perkins, or anybody else criticizing the Court's opinion on a matter, or decision on a matter that was pending?

A. Not criticizing a court's decision, but I recall many times when telegrams were sent and released out here shortly after they were sent.

Q. By the C. I. O.?

A. For the longshoremen.

Q. Telegrams that Mr. Bridges had sent to Madam Perkins?

A. Yes.

Q. Relating to labor matters or specific labor controversies?

A. Relative to specific labor controversies.

Q. Who customarily released such telegrams?

A. Well, before the C. I. O. was formed, whenever there was trouble surrounding the unloading or loading of a ship and it was felt necessary to send a telegram to Madam Perkins, I believe that John Shoemacher was the publicity man then, and the release might come through him, or it might come from Schmidt, or one of the other officials, or might come from Mr. Bridges.

[fol. 65] Q. During the time you have been connected with the Chronicle and prior to January 24th, 1938, you recall a good many instances where telegrams were sent by Harry Bridges to Madam Perkins and were released through some publicity agent or some other source and given to the newspapers in San Francisco, do you?

A. I don't think I would confine it to Madam Perkins; it might have been to other Washington officials.

Q. But there were a good many instances you recall of telegrams that were sent to Madam Perkins or other officials in Washington in which, as a matter of routine the telegram would be released by an agent of the C. I. O. and get into the San Francisco newspapers. Is that right?

A. I can't, offhand, recall specific cases.

Q. I don't want you to do that.

A. But I will say this in explanation: If they were not released out here, they would hear from us, because we wouldn't want the story to break in Washington. We feel that it should be released up here.

Q. But you do at this time recall instances, without reference to any particular one; you do recall instances in the past when telegrams have been sent by Mr. Bridges to Madam Perkins, or other officials and were released by the agent of the C. I. O. and given to the San Francisco newspapers?

A. Yes, I recall one or two instances during the '36-'37 [fol. 66] strike and I believe—in this, I am not sure whether Mr. Bridges sent these, or not, but in the New Orleans trouble telegrams were sent to federal officials from city and state officials and they were released out here.

Q. You said something about the newspapers in San Francisco—perhaps I do not use your exact words, but I gathered they would be quite irritated if the telegrams were released in the east rather than released so that the San Francisco newspapers could get the first story.

A. We would feel, if it broke in the west, we should get the first break on it.

Q. Do you know of any understanding with the C. I. O. where the newspapers would get the first break on it?

Mr. Katz: That is unwritten law.

By Mr. Luddy:

Q. Mr. Katz suggests there was an unwritten law that the San Francisco papers were to get the first crack on it.

Mr. Katz: I couldn't resist mentioning the unwritten law.

A. No, I don't know of any unwritten law. I think it would simply work out that way if the telegrams were released in Washington and it was pretty good news, we would call up and say, "Why didn't we get a break on this?"

By Mr. Luddy:

Q. And so far as you know, did you always get a break on it? By "you", I mean the newspaper fraternity in San Francisco?

[fol. 67] Mr. Katz: We are going to object to that upon the ground it is incompetent, irrelevant and immaterial.

The Court: He may answer.

A. I couldn't say whether we always did.

By Mr. Luddy:

Q. Would you say, from your experience there in San Francisco and your contact with Mr. Bridges, that it was the custom of Mr. Bridges to issue to the San Francisco newspapers, copies of all telegrams which he sent to Washington?

A. No, I couldn't say that that was true, because I don't know all the telegrams that he sent to Washington.

Mr. Luddy: I think that is all.
Mr. Katz: That is all.
Mr. Luddy: That is all.

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[fol. 68] Tuesday, September 6, 1938: 2 o'clock P. M.

* * * * * * *

JAMES D. O'NEIL, called as a witness in behalf of the Plaintiffs, being first duly sworn, testified as follows:

The Clerk: State your full name, please.

The Witness: James D. O'Neil, O-'-N-e-i-l.

Direct examination.

By Mr. Luddy:

Q. Mr. O'Neil, you reside in San Francisco, do you?

A. Yes, sir.

Q. And in January of this year you were publicity agent—I think it is substantially admitted—in the C. I. O. in San Francisco, were you?

A. That is correct.

Q. How long have you been employed in that capacity with the C. I. O. in San Francisco?

A. Since the previous July.

Q. July, 1937?

A. That is correct.

Q. And your duties continued as such for how long?

A. Continued on until the following July.

Q. That is for a period of one year from July, '37, to [fol. 69] July, '38, you were the publicity agent?

A. Yes, sir.

Q. Did you have any assistant?

Mr. Ashburn: Pardon me just a moment. The witness nods he had, but did not answer the question.

By Mr. Luddy:

Q. Did you have any assistance in your work as publicity agent, or handled it largely yourself?

A. I handled it myself.

Q. Prior to the time that you were the publicity agent for the C. I. O., had you had some newspaper experience, yourself?

A. Some twenty years.

Q. And had a part of that, at least, been in San Francisco?

A. No, largely all over the country, Chicago and New York, Denver, St. Paul and cities scattered all over. Newspapermen wander about quite a bit, and I was like the rest.

Q. Had there been a publicity agent for the C. I. O. in San Francisco prior to the time that you took it over?

A. No.

Q. You established the office, or bureau, or whatever you might call it?

A. That is right.

Q. And what were your duties? Did you handle all of [fol. 70] the publicity that related to the activities of Mr. Bridges up and down the west coast, and elsewhere throughout the United States?

A. When I handled the publicity for the west coast and regional offices, naturally any publicity that broke about Mr. Bridges would originate in the city where the news was made.

Q. As being a news matter, Mr. Bridges was the dominating figure in the C. I. O. at all times?

A. Yes.

Q. It is as a matter of fact, is it not, that Mr. Bridges has been a dominating figure in the C. I. O. throughout the United States?

A. He is news, wherever he goes.

Q. And any statement that Mr. Bridges makes is considered by the newspapers as being newsworthy, is it not?

A. It is.

Q. Was it your duty to keep before the public the activities of Mr. Bridges, and the activities of the C. I. O. during the period of time you were acting as publicity agent for the C. I. O.?

A. Yes, sir.

Q. And I take it that it was your business to get as favorable publicity and prompt publicity as you might—as you legitimately might?

[fol. 71] A. The idea was to get the correct facts before the public, which we could not do without a publicity department. It was impossible to get the side of labor before the public.

Q. And during that time I take it Mr. Bridges had occasion to send and receive a large number of telegrams?

A. He did.

Q. And is it a matter of fact that letters would come to Mr. Bridges from all over the world relating to the business, and some requiring publicity? Is that right?

A. That is right.

Q. And who took care of the matter of handling publicity of telegrams that might be released, either that Mr. Bridges received, or that Mr. Bridges dispatched?

A. Giving publicity to the telegrams?

Q. Yes.

A. I did.

Q. In what fashion would a copy of a telegram which Mr. Bridges had sent to—say, to Madam Perkins, be handled?

A. A copy would be placed on my desk, and it might come in the course of the regular mail, or be brought down by receptionist, for me, be passed on as I saw fit.

Q. Did you have an office?

A. Yes, sir.

Q. Where?

[fol. 72] A. Three doors down from the reception room of the C. I. O. and four doors from Mr. Bridges' office.

Q. Would you say the number of copies of telegrams which Mr. Bridges would send out over the period of time that you were publicity agent, and particularly prior to on or about January 24, 1938, was large in number?

A. Yes, sir; quite a number of telegrams on various matters.

Q. How often would matters come from Mr. Bridges' office down to your desk for attention?

A. Maybe once a day, or three or four times a day, depending upon what the mail brought in.

Q. And so far as you know, might all the telegrams Mr. Bridges dispatched to public officials, or copies of all of them, come to your desk?

A. I wouldn't say I got copies of all of them, but copies that had anything to do with the C. I. O., most of them came to my desk.

Q. In other words, the telegram which would come to your desk might be a telegram which Mr. Bridges might consider newsworthy and leave it for your consideration?

A. Not necessarily he would consider it newsworthy; I got telegrams, or copies of telegrams in connection with current events and the C. I. O. By that, I want to make it clear that I didn't get copies of any personal telegrams he [fol. 73] dispatched, or copies on union business, I don't get copies of those.

Q. Why would the copies come to your desk, Mr. O'Neil?

A. Because all the publicity for all of the C. I. O. was cleared through my office.

Q. Who determined as to whether any telegrams came to your desk might be newsworthy and susceptible of being sent to the press for publication?

A. I did.

Q. And for how long a period of time had you been making decisions on those matters?—Prior to January 24, 1938?

A. I have been making them since the day I went to work there.

Q. And did the matters which came to your desk from Mr. Bridges' office and which you caused to be sent to the newspapers, did they appear from time to time in the newspapers in San Francisco?

A. They did.

Q. And did they appear in newspapers outside of San Francisco, to your knowledge?

A. I wouldn't know about that.

Q. I take it, you having been a newspaper man for many years, are familiar with the fact that all members of the Associated Press are obliged to give the Associated Press the benefit of any news items which the Associated Press [fol. 74] thinks newsworthy?

A. That is a part of the agreement.

Q. You knew that to be a fact in 1938?

A. Yes, sir.

Q. And in the past, on or about January 24, 1938, had there been frequent occasions when news items which you released to the San Francisco papers were, to your knowledge, taken up by the Associated Press and sent out on a wire up and down the coast and throughout the country?

A. Yes, sir.

Q. Would you say that frequently happened?

A. Quite often.

Q. And in addition to the Associated Press, the National News and the United Press also picked up stories which appeared in the San Francisco papers relating to the activities of Mr. Bridges and put them out on their respective news services, did they not, to your knowledge?

A. I believe they did.

Q. I don't suppose you could estimate, could you, how many news items over a period of six months prior to January 24, 1938, which you released to San Francisco papers were picked up by the news gathering associations and sent to members throughout the coast, and throughout the United States?

A. There would be no way of determining that.

[fol. 75] Q. Several hundred, would you say?

A. I couldn't even give a guess offhand. It is impossible to even give a guess how many were carried on wires.

Q. Would you say it would be at least a hundred that would get on the wires and appear up and down the coast?

A. I wouldn't even give a guess on it. I have no idea, I said, how many were carried on the wires, and how much appeared in local papers.

Q. But there were cases when what you issued to the San Francisco papers appeared up and down the coast and throughout the United States?

A. Yes.

Q. Did Mr. Bridges ever criticize you, or tell you you had not exercised good judgment in respect to matters that you released to the San Francisco papers?

A. I don't recall that he ever did.

Q. At no time during the time that you were publicity agent there?

A. No, we never had any difficulty.

Q. You heard the testimony of Mr. Resner of the Chronicle given here in court today?

A. I did.

Q. You are the Mr. O'Neil he referred to as being the man he called on the 'phone that night?

[fol. 76] A. I am.

Q. Now, I think it appears without dispute that the first story of the telegram Mr. Bridges sent to Madam Perkins broke in the afternoon edition of the San Francisco News. Do you recall the fact that the story did break in the San Francisco News?

A. Yes.

Q. Do you know who gave the News, and by the "The News", I mean the San Francisco News issue of January 24th, which is Petitioner's Exhibit 1; who gave the News the information upon which the story was based which appeared upon the exhibit?

A. I did.

Q. And you gave it so that the afternoon paper might get a break on the story. Is that it?

A. No, I didn't give any paper a break. The telegram came over my desk and when it did, if I am not mistaken, I called the News, because the News was going to press at that time. You see, the News is the only afternoon paper we give news up there.

Q. And the News is the only afternoon paper to which you give news?

A. That is right. The other paper is a Hearst paper, and we have an absolute boycott on the Hearst papers; we can't give them anything.

[fol. 77] Q. And did you call up the San Francisco News immediately upon a copy of this telegram coming over your desk?

A. I believe I did.

Q. You read the telegram?

A. Yes, sir.

Q. Did it appear to you to be newsworthy?

A. When a man wires a Cabinet Member of the President it is news in any man's language, so——

Q. (Interrupting:) So you immediately called up to let them have it?

A. That is correct.

Q. And later the same day Mr. Resner of the Chronicle called you, did he not?

A. I believe he did.

Q. And I think he stated in his testimony he asked you for a little more detail and you read to him over the telephone a telegram. Is that right?

A. Yes, sir.

Mr. Ashburn: The witness nods his head.

A. Yes.

By Mr. Luddy:

Q. And is it a fact that the purported extracts from the telegram to Madam Perkins are true and correct extracts?

A. I wouldn't want to say that unless I had an official [fol. 78] copy of the telegram, itself. It is a long way back—eight months—the telegram, itself, and it was filed.

Mr. Luddy: I think it is admitted in the pleadings, and I think there is no dispute on that, Mr. O'Neil.

Mr. Wirin: No.

A. Then, it is all right.

Mr. Luddy: That is all.

Cross examination.

By Mr. Katz:

Q. Mr. O'Neil, did you receive any direction from Mr. Bridges to deliver that telegram to any of the newspapers?

[fol. 102] lack is shown, goes not to the intent, but to the mitigation of the punishment.

The Court: Overruled.

A. At that time, so far as I was concerned, I was not giving a thought to Judge Schmidt. The way I looked at the situation, the decision had been made in court and the receiver was to go into effect immediately and the situation seemed to be dangerous, and that is all I was concerned with, and I wasn't thinking of Judge Schmidt.

Q. Now, it is charged here in the papers, in substance and effect, that you sent the telegram to Frances Perkins which is set forth in the papers, as a device to warn Judge Schmidt as to what he was to do. Did you send such telegram with such a purpose and intent?

Mr. Luddy: I submit that that is not in evidence, nor in the pleadings.

The Court: So far as the question is concerned, it has already been asked and answered, I think.

By Mr. Katz:

Q. Did you have any intention at the time you sent the telegram of bringing a telegram or the contents thereof to the attention of Judge Schmidt?

Mr. Luddy: I object to that upon the ground that there is no necessity that he have any specific intent. The Court has already ruled that the telegram has been brought to the attention of Judge Schmidt.

The Court: Overruled.

[fol. 103] A. No, to the best of my recollection at this time I was having a little difficulty through long distance 'phone calls in getting the exact picture of the situation down here. I was trying to get exactly what had been done. I received one report that the order didn't become effective for a month, and I received conflicting reports, and the way I looked at it that the order would go into effect at the time stated, although I can remember I couldn't get a definite date as to when the order would go into effect, and all I was concerned with so far as I was concerned, the thing was already going to happen and I looked ahead and seen where trouble was going to occur and I wasn't thinking of influencing Judge Schmidt, or anything along that line. The other matters seemed to me much more important.

Q. I understand that you sent telegrams to other agencies which you considered affected by that decision?

A. Yes, the maritime commission — for example, the United States Maritime Commission is now in the process of taking over all of the ships. They are, in effect, the legal owners, and likewise certain actions can occur on those ships which can make the men liable to take action subject to punishment, so the substance of the telegram— just a couple of months before that, Mr. Joseph Kennedy, who is the present ambassador to Great Britain was then president of the Maritime Commission and he was then up in Seattle and we were settling a strike up there. The port [fol. 104] had been tied up for three weeks and the last thing I knew Mr. Kennedy said was, "When anything is coming up out here, let me know before it happens from now on." So I wired Joseph Kennedy and he wired back and said, "We have no jurisdiction."

Q. And as I understand it, that telegram is substantially the same as the telegram to Mrs. Perkins?

A. Yes, I would say so. The telegram is substantially the same.

Q. When you spoke to Resner, did you think that Resner was going to make a copy of that telegram and put it on the spike for Associated Press release?

A. No. I know generally the set-up of newspapers and their wire services, but I never gave it a thought at that time.

Q. Did you tell him, or give his instructions about getting it printed anywhere other than San Francisco?

A. No.

Q. Now, you knew that Resner was connected only with the San Francisco newspaper. Is that right?

A. The Chronicle.

Q. Did you, yourself, do anything at all with that telegram about sending it to Judge Schmidt, or mailing it to him, or anything of that kind?

Mr. Luddy: That is objected to upon the ground that it is entirely immaterial and outside of the issues in this case. [fol. 105] The Court: Sustained.

By Mr. Katz:

Q. I understood you to say that telegrams go to the desk of Mr. O'Neil so that he may be advised of what is going on in the C. I. O.?

A. At all times.

Q. And did you consider this to be one of those telegrams that he might know what was going on?

Mr. Luddy: Now, I submit that counsel is merely repeating and going over the ground Mr. Wirin has.

The Court: Yes, but he may answer.

A. To the best of my recollection I never gave it any thought in that way. The determination of the publicity end of it was left up to Mr. O'Neil, and I can't recollect doing anything in relation to that specific telegram.

By the Court:

Q. When you dictated this telegram to your secretary, that was your end?

A. So far as I was concerned.

Q. You knew she was going to send the telegram and give Mr. O'Neil a copy?

A. Yes, sir.

By Mr. Katz:

Q. In dictating that telegram and sending it to the person to whom you sent it, did you think you were following the usage and practice which had grown up in the past with respect to the sending of telegrams?

Mr. Luddy: That is objected to upon the ground that it [fol. 106] is the publishing of the telegram that is in issue.

The Court: He may answer it.

A. I have already answered it more or less. We have a working arrangement with the United States Government along those lines. We are criticized enough for it, but it is there and as I say there is no compulsion to it and we, at all times, keep them informed, and various government agencies and government officials, and I would say that practically every day, so far as our own set-up is concerned and the C. I. O. set-up, numerous telegrams go out to some agency or other of the government, or officials of the government.

Mr. Katz: Cross examine.

The Court: Tomorrow morning at 10 o'clock.

(Whereupon an adjournment was taken until 10 o'clock a. m. on the following day, Tuesday, September 13, 1938.)

[fol. 107] Tuesday, September 13, 1938; 10 o'clock A. M.

HARRY R. BRIDGES resumed the stand:

The Court: Had you notified the Department of Labor by telegram or otherwise, that the case—I am referring now prior to the telegram of January 24th—that the matter just referred to in the stipulation was up before the National Labor Relations Board; that is to say, was to be?

A. Yes, they were always notified.

The Court: So that the statement to that effect in the telegram was just reiterating a fact which they already had before them?

A. Yes, I had notified them in the early part of the year. I was in Washington, D. C. and I personally notified them then.

Mr. Luddy: May we proceed, your Honor?

The Court: Yes. No further questions.

Mr. Wirin: Well, I had a few questions I would like to conclude with.

The Court: Well, if it is a part of your direct, or redirect.

[fol. 108] Direct examination (resumed).

By Mr. Katz:

Q. Well now, Mr. Bridges, in the past, have you ever had a real call to press conferences?

A. Yes, sir.

Q. And generally what were the occasions and why were the press conferences held?

Mr. Luddy: That is objected to as not being material to any of the issues in this case, and having nothing to do with the circumstances surrounding the sending of the telegram.

The Court: Well, you cannot be too strict. Answer the question. Objection overruled.

A. On various occasions we held press conferences; on the arrival of national figures in the city for the purpose of interviewing them; on emergency situations—serious situations, and so forth. In that case why, we called press conferences with the various newspapers.

By Mr. Katz:

Q. In connection with this telegram did you ever ask O'Neil to call a press conference?

A. No.

Q. What was the basic purpose for a press conference?

Mr. Luddy: That is objected to upon the ground it is calling for a conclusion of the witness and has already been asked and answered as to what the purpose was.

[fol. 109] The Court: My stupidity. I suppose by press conferences, they were between Mr. O'Neil and the other officials. It is obvious to me now that he called in reporters.

Mr. Wirin: In other words, it was a conference with the press.

The Court: Yes. As I say, in my stupidity I missed that point. I have it now. Do you want to have him tell what everybody knows, what the purpose of a press conference is?

Mr. Katz: No.

The Court: All right.

By Mr. Katz:

Q. Now, Mr. Bridges, in answering a question put to you on direct examination once, you said that on January 24, 1938, you had no information at all concerning the pendency of a motion for a new trial, or the pendency of a motion to vacate the order appointing the receiver. In answer to a subsequent question you made reference to—you said that you understood first, that there was a 30 day stay and that wouldn't go into effect for seven days. Will you explain the answer, please?

A. Well, I meant by that, as I recall, that order was handed down on a Friday and I don't think I heard about it until a Saturday afternoon, but Monday I still never had a clear official report of exactly what was taking place. I had conflicting reports and I didn't know anything about an order for a new trial, and I didn't know anything that [fol. 110] I recall about an order to vacate the receivership. I wasn't entirely—I never had any definite information as to the state of the receivership.

Q. Were you of the opinion, so far as Judge Schmidt was concerned, that that matter was finished by the judgment?

Mr. Luddy: That is objected to upon the ground that it is calling for a conclusion of the witness. Certainly the witness is presumed to know what the law is.

The Court: He may answer.

A. I am not acquainted with all of the technicalities of law and my distinct thought at that time was that we were through with the court and there was no further decision to be made by the Court. The case had been going for two or three months at that time, and I thought that decision was final, and that is definitely the way we looked at it.

Mr. Katz: Cross-examine.

Cross-examination.

By Mr. Luddy:

Q. Mr. Bridges, you have been the president of the International Longshoremen and Warehousemen Union for how many years?

A. Well, that is a new one, when we affiliated with the C. I. O.?

Q. Yes, I understand so. Now, how many years?

[fol. 111] A. Since August, 1937.

Q. And you have been a west coast director of the C. I. O. for how many years?

A. Since July, '37.

Q. And you have been district president of the Longshoremen and Warehousemen Union now, how long?

A. Since June, 1936.

Q. Now, prior to your affiliation with the particular labor groups I have just asked you about, had you been connected as an officer with any other labor organization on the west coast?

A. Well, I had been the local president of the Longshoremen in San Francisco since 1934, and connected in a minor official capacity prior to that time.

Q. And during the time that you have been connected with these various labor organizations, had there been lawsuits in which the organization with which you were connected were either plaintiff or defendant?

A. No.

Q. None, at any time?

A. No, not that I can recall. As to the best of my knowledge there never was any; never troubled with them until this particular case.

Q. And during the time that you have been active in labor organizations you have had frequent contact with [fol. 112] newspaper reporters, have you not?

A. That is correct.

Q. In all parts of the country?

A. I have.

Q. And your contacts were so frequent with the members of the press that finally a publicity bureau was established in San Francisco in connection with your organization, was it not?

A. That wasn't entirely the reason.

Q. No, but that had something to do with the organization of the publicity bureau, the fact that contacts with the press were frequent and deemed desirable. Is that right?

A. Well, so far as the publicity bureau was concerned, the press statements were only a small part of their work.

Q. You had been interviewed by newspaper reporters for many years prior to 1938, had you not?

A. Well, I would say four years—three years.

Q. Well, taking the last two years prior to that date, interviews with newspaper reporters were rather a frequent occurrence in your life, were they not?

A. They were not.

Q. Perhaps I am mistaken as to the word "frequent," but certainly you had more interviews with the newspaper reporters than the average individual not in the public eye, did you not?

[fol. 113] A. That is correct, yes.

Q. And the statements which you had given to newspaper reporters in San Francisco, to your knowledge, appeared as news items in other sections of the United States?

A. Yes, that is correct.

Q. Did the C. I. O. or any of the organizations to which you were connected for the past few years, or yourself, have any subscription to any clipping bureaus, or anything of that sort?

A. No.

Mr. Luddy: That is all, Mr. Bridges.

The Court: Proceed.

Mr. Katz: Does your Honor care to ask a question?

The Court: No.

Redirect examination.

By Mr. Katz:

Q. Mr. Bridges, you said in answer to a question by Mr. Luddy that in so far as the publicity department is con-

cerned, the press releases were only a part of their work. Will you tell us what the balance was?

Mr. Luddy: That is objected to upon the ground that it is not proper redirect examination and has been fully covered on direct examination.

The Court: I don't see what the relevancy is.

[fol. 114] Mr. Katz: Has the Court ruled?

The Court: Sustained.

By Mr. Katz:

Q. You referred to press conferences on direct examination. Will you tell the Court why it was that you had O'Neil arrange press conferences from time to time?

Mr. Luddy: I object to that upon the ground that it is not proper redirect examination.

The Court: It isn't proper.

Mr. Katz: The question is, why?

The Court: If you do something to impress it upon them, you impress it upon them.

Mr. Katz: That is correct.

The Court: And if you weren't interested, you would just send it out in the ordinary routine.

By Mr. Katz:

Q. Is the statement by the Court correct?

A. Substantially correct in question—that is correct.

Mr. Katz: That is our case.

Mr. Luddy: We have no rebuttal.

The Court: Are you ready to argue it?

Mr. Luddy: I think so, your Honor.

[fol. 115] REPORTER'S CERTIFICATE

STATE OF CALIFORNIA,
County of Los Angeles, ss:

I, CLYDE W. SMITH, an Official Reporter of the Superior Court of the State of California, in and for the County of Los Angeles do hereby certify that the foregoing pages comprise a full, true and correct transcript of the testimony of the witnesses Brian Bell, Lawrence Resner, Arthur Eggleston and Harry R. Bridges in the case of P. W. Walker, et al., Plaintiffs, vs. International Longshoremen's

Association Local 38-82 Inc., et al., Defendants, Superior Court No. 420356.

Dated this 17th day of November, 1938.

Clyde W. Smith, Official Reporter.

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[fol. 116] IN SUPREME COURT OF CALIFORNIA

IN BANK

S. F. No. 16174

BRIDGES

vs.

SUPERIOR COURT, LOS ANGELES COUNTY

ORDER DENYING PETITION FOR WRIT OF REVIEW—
Filed December 1, 1938

By the Court:

The petition for a writ of review herein, is denied.

Dated: December 1, 1938.

(Sig.) Seawell, Acting Chief Justice.

[File endorsement omitted.]

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[fol. 117] IN SUPREME COURT OF CALIFORNIA
IN BANK

[Title omitted]

ORDER VACATING JUDGMENT, ETC.—Filed December 30, 1938

Upon petition for rehearing, the judgment of the court, heretofore entered herein, is hereby vacated and set aside.

Let a writ of review issue in the above entitled matter, returnable before this court in bank, at its courtroom in

the City of Los Angeles, on March 7th, 1939, at ten o'clock a. m.

Dated: December 29, 1938

Signed: Seawell, Acting Chief Justice. Shenk, Justice. Curtis, Justice. Langdon, J., Justice. Edmonds, Justice.

[File endorsement omitted.]

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[fol. 118] [File endorsement omitted.]

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[fol. 119] IN THE SUPREME COURT OF CALIFORNIA

[Title omitted]

STIPULATION AMENDING REPORTER'S TRANSCRIPT, ETC.—Filed March 7, 1939

It is hereby stipulated, by and between the parties to the above entitled action, acting through their duly authorized attorneys of record herein, that subject to the approval of this Court, an order may be entered upon presentation of this stipulation, amending the Reporter's Transcript of a portion of the proceedings had in the lower Court, filed herein and by reference incorporated in the petition for writ of review, so as to add to and make a part of said Partial Transcript the photostats attached hereto marked respectively "Pro. Ex. 1" and "Pro. Ex. 2";

And it is further stipulated that the newspaper article, of which Exhibit "Pro. Ex. 2" is a photostatic copy, is the article referred to in said Transcript as having been placed upon the wires of the Associated Press during the evening of January 23, 1938, at San Francisco and transmitted to the Associated Press member papers in Los Angeles, and

[fol. 120] by them published in their morning and afternoon editions on January 24 and January 25, 1938.

Dated this 6th day of March, 1939.

Gallagher, Wirin & Johnson; Gladstein, Grossman & Margolis; and Charles J. Katz. By A. L. Wirin, Attorneys for Petitioner.

J. H. O'Connor, County Counsel; Douglas De Coster, Chief Deputy County Counsel; S. V. O. Prichard, Deputy County Counsel, Allen W. Ashburn, Michael G. Luddy and Arnold Praeger. By Michael G. Luddy, Attorneys for Respondent.

Order

It is ordered

Dated: March —, 1939.

—— ——, Chief Justice.

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[fol. 121] Pro. Exhibit 1

**I. L. A. Files Suit on I. L. W. U. Over Work**

The revived International Longshoremen's Association, affiliated with the American Federation of Labor, filed a suit in Superior Court today seeking to compel the International Longshoremen & Warehousemen's Union to put its men to work on the waterfront.

Harry Bridges, Coast head of the C. I. O. and longshoremen, wired Secy. of Labor Frances Perkins at the same time that the port of Los Angeles will be tied up and the entire Pacific Coast involved if an attempt is made to enforce a Los Angeles Superior Court order putting a receiver in charge of the San Pedro Longshoremen's Union.

The I. L. A., Local 38-39, through Lawrence Mallen, president; James F. Kennedy, secretary, and eight others charged the Committee for Industrial Organization had illegally seized control of longshoremen and the waterfront agreements.

An injunction was asked to prevent I. L. W. U. from attempting to exercise the sole right of dispatching stevedores.

Superior Judge Louis H. Ward, remarking that he "realized the need of quick action in this suit," set a hearing for 10. a. m. tomorrow on whether a temporary restraining order should be issued. He set Feb. 26 as trial date on the request for a permanent injunction.

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[fol. 122] PEO. EXHIBIT 2

**Bridges Says Court Action Means Tieup**

Secretary Perkins Gets Warning L. A. Edict May Close Coast Ports

A new Pacific Coast water front tieup is threatened, Secretary of Labor Perkins was advised yesterday in a telegram sent from here by Harry Bridges, president of the Pacific Coast Longshoremen, and West Coast C. I. O. director.

Immediate reason for the threatened tieup is the receivership established last week in Los Angeles on the order of Judge Reuben Schmidt over the funds and possessions of San Pedro longshoremen, Bridges said.

Effective Saturday

Judge Schmidt named Will Hays the receiver, made the receivership effective this coming Saturday, on an action brought in the name of the International Longshoremen's Association, Local 38-82.

Local 38-82, formed by a nucleus of longshoremen opposed to the C. I. O., took up the charter abandoned by San Pedro longshoremen when they voted to join with the International Longshoremen's and Warehousemen's Association, and then affiliate with the C. I. O.

The reorganized A. F. L. union of longshoremen claimed the rights retained by the I. L. W. U. longshoremen's unit when C. I. O. affiliation was effected.

Decision Hit

Bridges' telegram referred to Judge Schmidt's decision, and read: "This decision is outrageous, considering I. L. A. has 15 members and I. L. W. U. 2000. I. L. W. U. has pe-

titioned N. L. R. B. for certification representing San Pedro longshoremen, with I. L. A. denied intervention by board because they represent only 15 men."

Bridges referred to a N. L. R. B. hearing concluded January 6 in Los Angeles, when I. L. A. unit was refused the board's permission to act as an interested party, Bridges said.

The telegram to Secretary Perkins continued: "Attempted enforcement Schmidt decision will tie up port of Los Angeles and involve entire Pacific Coast. I. L. W. U., representing over 11,000 of the 12,000 longshoremen on Pacific Coast does not intend to allow State courts to overrule majority vote of the membership in choosing its officers and representatives and to override N. L. R. B."

The only available spokesman for Pacific Coast water front employers, Gregory Harrison, attorney, said it is the position of the employers, repeated time and again, not to take " a part in interunion affairs."

## Mass Meeting Due

Bridges said he intended to leave here for San Pedro, where members of the C. I. O. local intend to hold a mass protest meeting Wednesday or Thursday.

In further explanation of his telegram, the longshoremen's president said: "Judge Schmidt has actually ruled that the port of Los Angeles will be tied up. This means the automatic tieup of all other ports on the Coast.

"The court has ruled that 12 men own the contracts. Well, then, let the 12 men load the ships. The court is trying to force the longshoremen to join the I. L. A., and the men aren't going to do it."

"If the courts can decide this, it also means that the courts can rule on whether or not we have the right to strike. It means that any two or three men can protest any economic action decided upon by the majority of the membership of the union.

"We may as well understand where we stand. If they can get away with this, it means the end of unions on the Pacific Coast. There won't be anything but company unions," Bridges said.

## Labor Board Petition

In another phase of the same dispute, the I. L. W. U. district and locals last week filed a petition for certification as

the bargaining agent for Pacific Coast longshoremen with the National Labor Relations Board.

The C. I. O. longshoremen seek certification on a Coastwise basis, or if not a coastwise, on a regional basis. Regions named in the petition are Los Angeles, San Francisco, Portland and Seattle.

Locally, the longshoremen have asked the Waterfront Employers' Association of San Francisco to give formal recognition to the C. I. O.'s rights under the existing contract, it was learned.

A new suit also was filed here yesterday by the reorganized A. F. L. local, I. L. A. 38-39, to obtain the rights and possession now held by the I. L. W. U., Local 1-10.

Court Order Issued

The suit, signed by Lawrence Mallen, and ten members of the I. L. A. 38-79, is similar in many respects to one filed several months ago by the Tacoma unit of longshoremen against the C. I. O. organization.

Superior Judge Goodell issued an order for the defendants, Bridges and Henry Schmidt, and other I. L. W. U. officials, to appear in court tomorrow and show cause why an injunction should not be issued in favor of Mallen and his associates.

Mallen's compiaint, drawn up for him by Aaron Sapiro, attorney, cites the refusal by the I. L. W. U. to dispatch his men through the I. L. W. U. hiring hall, alleges illegal seizure of property, books and funds, and asks the right to operate under the existing water front contracts.

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[fol. 123] [File endorsement omitted]

[fol. 124] IN SUPREME COURT OF CALIFORNIA

[Title omitted]

STIPULATION AS TO RETURN BY RESPONDENT TO, AND RECORD UPON, WRIT OF REVIEW—Filed March 7, 1939

It is Hereby Stipulated, by and between the parties to the above entitled action, acting through their duly authorized attorneys of record herein, that the return of the respondent,

directed by writ of review heretofore issued in this matter, and the record upon review herein, shall consist of the following:

(1) The transcript of a portion of the proceedings had in the respondent Court, as amended by addition of two exhibits, pursuant to stipulation this day made and filed, which said transcript was heretofore filed herein, and by reference incorporated in the petition for writ of review herein;

(2) The affidavit of J. Louis Elkins filed in the lower Court in these proceedings therein, true and correct copy of which is attached to and made a part of the petition for writ of review herein, being pages 1-14 inclusive of Exhibit [fol. 125] "A" of said petition, which said copy is by reference incorporated herein and shall be considered in all respects as though a certified copy thereof were filed herein as a part of this record;

(3) The affidavit of L. E. Lampton filed in the lower Court in these proceedings therein, true and correct copy of which is attached to and made a part of the petition for writ of review herein, being pages 15-19 inclusive of Exhibit "A" of said petition, which said copy is by reference incorporated herein and shall be considered in all respects as though a certified copy thereof were filed herein as a part of this record;

(4) Permanent injunction issued in the case of P. W. Walker, et al., v. International Longshoremen's Association, Local 38-82, et al., in action No. 420356 in the records and files of the respondent Court, true and correct copy of which is attached to and made a part of the petition for writ of review herein, being pages 20-23 inclusive of Exhibit "A" of said petition, which said copy is by reference incorporated herein and shall be considered in all respects as though a certified copy thereof were filed herein as a part of this record;

(5) Findings of fact and conclusions of law filed in the case of P. W. Walker, et al., v. International Longshoremen's Association, Local 38-82, et al., in action No. 420356 in the records and files of the respondent Court, true and [fol. 126] correct copy of which is attached to and made a part of the petition for writ of review herein, being pages 24-47 inclusive of Exhibit "A" of said petition, which said copy is by reference incorporated herein and shall be con-

sidered in all respects as though a certified copy thereof were filed herein as a part of this record;

(6) Affidavit of Charles E. Sharritt filed in the lower Court in these proceedings therein, true and correct copy of which is attached to and made a part of the petition for writ of review herein, being pages 48-56 inclusive of Exhibit "A" of said petition, which said copy is by reference incorporated herein and shall be considered in all respects as though a certified copy thereof were filed herein as a part of this record;

(7) Affidavit of A. G. Stanham filed in the lower Court in these proceedings therein, true and correct copy of which is attached to and made a part of the petition for writ of review herein, being pages 57 and 58 of Exhibit "A" of said petition, which said copy is by reference incorporated herein and shall be considered in all respects as though a certified copy thereof were filed herein as a part of this record;

(8) Affidavit of H. R. Bridges filed in support of motion to vacate order appointing receiver in the case of P. W. Walker, et al., v. International Longshoremen's Association, Local 38-82, et al., in action No. 420356 in the records [fol. 127] and files of the respondent Court, true and correct copy of which is attached to and made a part of the petition for writ of review herein, being pages 59-73 inclusive of Exhibit "A" of said petition, which said copy is by reference incorporated herein and shall be considered in all respects as though a certified copy thereof were filed herein as a part of this record;

(9) Order to show cause issued by respondent Court in these proceedings therein, true and correct copy of which is attached to, marked Exhibit "B", and made a part of, the petition for writ of review herein, which said copy is by reference incorporated herein and shall be considered in all respects as though a certified copy thereof were filed herein as a part of this record;

(10) Motion to quash order to show cause filed in the lower Court in these proceedings therein, true and correct copy of which is attached to, marked Exhibit "C", and made a part of, the petition for writ of review herein, which said copy is by reference incorporated herein and shall be con-

sidered in all respects as though a certified copy thereof were filed herein as a part of this record;

(11) Demurrer to order to show cause filed in the lower Court in these proceedings therein, true and correct copy of which is attached to, marked Exhibit "D", and made a part of, the petition for writ of review herein, which said copy is by reference incorporated herein and shall be con-
[fol. 128] sidered in all respects as though a certified copy thereof were filed herein as a part of this record;

(12) Opinion and order of Hon. Edward T. Bishop, a judge of respondent Court, filed and entered in the lower Court in these proceedings therein, true and correct copy of which is attached to, marked Exhibit "E", and made a part of, the petition for writ of review herein, which said copy is by reference incorporated herein and shall be considered in all respects as though a certified copy thereof were filed herein as a part of this record;

(13) Answer of H. R. Bridges, sometimes known as Harry R. Bridges, filed in the lower Court in these proceedings therein, true and correct copy of which is attached to, marked Exhibit "F", and made a part of, the petition for writ of review herein, which said copy is by reference incorporated herein and shall be considered in all respects as though a certified copy thereof were filed herein as a part of this record;

(14) Demand for jury trial filed in the lower Court in these proceedings therein, true and correct copy of which is attached to, marked Exhibit "G", and made a part of, the petition for writ of review herein, which said copy is by reference incorporated herein and shall be considered in all respects as though a certified copy thereof were filed herein as a part of this record;

(15) Transcript of proceedings had in the lower Court [fol. 129] in these proceedings therein, had on Tuesday, September 13, 1938, true and correct copy of which is attached to, marked Exhibit "H", and made a part of, the petition for writ of review herein, which said copy is by reference incorporated herein and shall be considered in all respects as though a certified copy thereof were filed herein as a part of this record;

(16) Judgment of respondent Court, filed and entered in the lower Court in these proceedings therein, true and correct copy of which is attached to, marked Exhibit "I",

and made a part of, the petition for writ of review herein, which said copy is by reference incorporated herein and shall be considered in all respects as though a certified copy thereof were filed herein as a part of this record;

(17) Notice of motions to dismiss, to vacate judgment and for a new trial, filed in the lower Court in these proceedings therein, true and correct copy of which is attached to, marked Exhibit "J", and made a part of, the petition for writ of review herein, which said copy is by reference incorporated herein and shall be considered in all respects as though a certified copy thereof were filed herein as a part of this record;

(18) Orders extending stay filed and entered in the lower Court in these proceedings therein, true and correct copies of which are attached to, marked Exhibits "K" and "L", and made a part of, the petition for writ of review [fol. 130] herein, which said copies are by reference incorporated herein and shall be considered in all respects as though certified copies thereof were filed herein as a part of this record;

(19) The stipulations this day filed herein, relating to the exhibit "Pro. Ex. 2", and the transmittal of the article, of which said exhibit is a photostatic copy, to the Los Angeles newspapers, members of the Associated Press, and the publication of said article by said member papers in Los Angeles on January 24 and January 25, 1938;

And it is Further Stipulated that the foregoing stipulations, records, files and proceedings, and all matters therein referred to, constitute for the purposes of the above entitled proceedings a complete and correct record of the proceedings had and taken in the Court whose order is herein under review, and the review of said order may be taken, heard and determined upon said record.

Dated this 6th day of March, 1939.

Gallagher, Wirin & Johnson; Gladstein, Grossman & Margolis; and Charles J. Katz, by A. L. Wirin, Attorneys for Petitioner.

J. H. O'Connor, County Counsel; Douglas De Coster, Chief Deputy County Counsel; S. V. O. Prichard, Deputy County Counsel; Allen W. Ashburn; Michael G. Luddy; and Arnold Praeger, by Michael G. Luddy, Attorneys for Respondent.

* * * * * * *

[fols. 131-132] IN SUPREME COURT OF CALIFORNIA

S. F. No. 16174. In Bank. October 16, 1939

HARRY R. BRIDGES, Petitioner,

v.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES, Respondent

[fol. 133] Application for a writ of certiorari to review a judgment of the Superior Court of Los Angeles County, Ruben S. Schmidt, Judge, adjudging petitioner guilty of contempt. Judgment affirmed. Edmonds, J., dissents.

For Petitioner—Gallagher, Wirin & Johnson; Gladstein, Grossman & Margolis; Charles J. Katz, A. L. Wirin.

For Respondent—J. H. O'Connor, County Counsel; Douglas De Coster, Chief Deputy County Counsel; S. V. O. Prichard, Deputy County Counsel; Allen W. Ashburn, Michael G. Luddy, Arnold Praeger.

OPINION

This proceeding was instituted for the purpose of reviewing a judgment of the Superior Court of the County of Los Angeles whereby the petitioner, Harry R. Bridges, was found guilty of contempt of court. Upon the filing of the petition herein, an order was made that the proceedings before the trial court be certified to this court in order that the same might be reviewed and such action taken therein as is by law required. The basis of the contempt proceeding was the alleged publication of a portion of a telegram sent by petitioner to the secretary of labor which, it is claimed, contained statements calculated to, and which had an inherent tendency to, interfere with the proceedings of a certain action then pending before the Honorable Ruben S. Schmidt, a judge of the Superior Court of said County of Los Angeles. That action was entitled P. W. Walker et [fol. 134] al., v. International Longshoremen's Association, District Local 38-82, Inc. et al. and carried the number 420356.

The proceedings against petitioner involving said charge of contempt were commenced by the filing of four affidavits, each entitled, "In the Matter of H. R. Bridges, sometimes known as Harry R. Bridges. In Contempt", and were

verified respectively by J. Louis Elkins, executive secretary of the Los Angeles Bar Association; L. E. Lampton, clerk of the Superior Court of the County of Los Angeles; Charles E. Sharritt, and A. G. Stanham, deputy county clerks of said court. After proceedings duly had, the petitioner appeared in said court, filed an answer to the charge made against him in said affidavits and the matter was heard by the Honorable Edward T. Bishop, a judge of said superior court. At the close of said hearing, the petitioner herein was found guilty of contempt of court upon the second count set forth in the affidavit of J. Louis Elkins, and not guilty as charged in the third count of said affidavit. The trial court had theretofore sustained a demurrer of petitioner to the charge as set forth in the first count of said affidavit. In adjudging the petitioner herein guilty of contempt of court, the trial court made findings of fact which we set out in full as follows:

"That on or about the 18th day of September, 1937, an action was commenced in the above entitled court by the filing of a complaint and the issuance of a summons entitled, 'P. W. Walker et al., plaintiffs, v. International Longshoremen's Association—Local 38-82, Inc., a corporation et al., defendants', which said action is known as action number 420356 in said court.

"That said action was tried in the above entitled court before the Honorable Ruben S. Schmidt, as judge thereof, and on the 21st day of January, 1938, the said Ruben S. Schmidt, as judge of said court, made, signed and filed his findings of fact and conclusions of law in said action.

"That thereafter, but on the same day, a judgment and permanent injunction in said action were made and filed, in and by the terms of which a receiver was appointed over said International Longshoremen's Association, Local 38-82, Inc., and said receiver on said date qualified by filing a bond required by said judgment to be filed by him, and by making and filing his oath as such receiver.

"That on the next day, to-wit, the 22nd day of January, an order was made and entered by the court, staying the execution of said judgment and said injunction to the 29th day of January, 1938; that said judgment and permanent injunction were entered by the clerk of this court, on the 24th day of January, 1938, in the judgment book kept by him for that purpose, and that on said date all the defend-

ants in said action, against whom judgment had been rendered and said permanent injunction issued, made and served a notice of intention to move for a new trial and a notice of motion to vacate the judgment and decision in said action.

"That from the time of the filing of said action, to and including the time of the events hereinafter referred to, the existence of said action and of the controversy involved therein received wide and general publicity in the Pacific Coast states of the United States of America. That almost daily during said period news items respecting the controversy involved in said action, and respecting conditions in the maritime industry on the Pacific Coast as a result of said controversy, appeared in the daily newspapers published and circulated in the City of Los Angeles, and that the [fol. 135] existence of said controversy and of the fact that the said controversy was pending in the courts for determination was a matter of great public interest and general public discussion.

"That on the 24th day of January, 1938, the defendant Harry R. Bridges dispatched a telegraphic message to Frances Perkins, Secretary of Labor in the Cabinet of the President of the United States, at Washington, D. C., which telegram contained words and figures as follows, to-wit: 'This decision is outrageous considering I. L. A. has 15 members (in San Pedro) and the International Longshoremen-Warehousemen Union has 3000. International Longshoremen-Warehousemen Union has petitioned the labor board for certification to represent San Pedro longshoremen with International Longshoremen Association denied representation because it represents only 15 men. Board hearing held; decision now pending; Attempted enforcement of Schmidt decision will tie-up port of Los Angeles and involve entire Pacific Coast. International Longshoremen-Warehousemen Union, representing over 11,000 of the 12,000 longshoremen on the Pacific Coast, does not intend to allow state courts to override the majority vote of members in choosing its officers and representatives and to override the National Labor Relations Board.' That the words 'this decision' and the words, 'Schmidt decision', as used in the telegram, referred to the judgment and permanent injunction in which was contained an order appointing a receiver, as hereinabove noted. That the initials 'I. L. A.' referred to in said telegram, referred to International Long-

shoremen's Association, Local 38-82, Inc., hereinabove referred to.

"That at or about the time of the sending of said telegram the defendant Harry R. Bridges caused a copy thereto to be given to one James D. O'Neil, for the purpose and with the intent that the contents of said telegram should, and would be, furnished to and published in newspapers on the Pacific Coast and elsewhere, and said James D. O'Neil did give said telegram to newspaper reporters, and on the 24th and 25th days of January, 1938, the portion of said telegram above set forth was published in newspapers of wide and general circulation in the cities of San Francisco and Los Angeles, in the State of California, and the sending of said telegram and the contents thereof were thus made public and received wide and general publicity in the County of Los Angeles and elsewhere.

"That the statements contained in said telegram, and the publication of the fact of the sending of said telegram, and the publication of the contents thereof, all as aforesaid, were in and of themselves calculated, and had, an inherent tendency to interfere with the orderly and due administration of justice in said action No. 420356, and to interfere with, influence, sway, and control the proceedings in said action, and to embarrass and influence the actions and decisions of the judge before whom said action was pending."

As we view the proceedings before us, it involves three major questions which call for answers. There are also questions of minor importance which will be discussed briefly at the close of this opinion. These three questions are: first, one of procedure, second, the constitutionality of the last sentence of subdivision 13 of section 1209 of the Code of Civil Procedure, and third, whether the petitioner was responsible for the publication of the telegram sent to the secretary of labor, or that portion thereof which found its way into the public press, and if so, was the subject-matter thereof of such a character that the publica-[fol. 136] tion thereof would subject the petitioner to punishment for contempt of court?

At the inception of the proceeding against petitioner, he objected to the procedure by means of which he was brought before the court and prosecuted on the charge of which he was subsequently found guilty. As we have seen, this proceeding was initiated by the filing of four affidavits

each of which was entitled, "In the Matter of H. R. Bridges, sometimes known as Harry R. Bridges. In Contempt." Upon these affidavits being filed, the trial court issue its order and directed petitioner to show cause why he should not be punished for contempt. The petitioner appeared, and both by motion to quash the order to show cause and by demurrer, raised the procedural question and contended that the proceeding against him was a criminal proceeding and should have been brought in the name of the People of the State of California, as plaintiff, and prosecuted by the district attorney of the county, or the attorney-general of the state, instead of being entitled as indicated above, and prosecuted as it was by three private attorneys purporting to represent the Los Angeles bar association. Both the motion and demurrer were held to be without merit, and accordingly the motion was denied and the demurrer was overruled. The petitioner thereupon filed a verified answer to the charge against him, and the case was then set for trial upon the issues made by said answer and the affidavits of Elkins, and others. Before trial of said cause, the petitioner filed a demand for a jury to try said issues, which demand was denied, and said trial was held and the cause decided by the court without a jury. Petitioner therefore contends that said proceedings were fatally defective, (1) because they were not entitled and prosecuted in the name of the People of the State of California, (2) because they were prosecuted by private attorneys and not by the district attorney of said county of Los Angeles, or by the attorney-general of the state, and (3) because petitioner was denied a jury trial.

[1] We shall first direct our attention to the first of these three questions, that is, as to the procedure followed in this proceeding by which petitioner was charged, prosecuted and found guilty of contempt of court in the manner stated above. We find that both the Penal Code and the Code of Civil Procedure contain provisions defining certain acts which they respectively denounce as contempts of court. By section 166 of the Penal Code it is provided that every person guilty of contempt of court of the kinds therein enumerated is guilty of a misdemeanor. Section 1209 of the Code of Civil Procedure provides that certain acts or omissions in respect to a court of justice enumerated therein are made contempts of court. There is a general similarity between acts set forth in either of these code

sections to those embraced in the other although in some respects the provisions of one of said sections differ from those contained in the other. Undoubtedly proceedings against a person charged with contempt of court under the provisions of the Penal Code should be entitled and prosecuted in the name of the People of the State of California, and by their authority. (Art. VI, sec. 20, Const. of California.) By section 1211 of the Code of Civil Procedure it is provided that, "When the contempt is not committed in the immediate view and presence of the court, or of the judge or justice at chambers, an affidavit shall be presented to the court, judge, or justice, of the facts constituting the contempt." Provisions are made by section 1212 of the Code of Civil Procedure for process to bring the accused person before the court where a trial [tol. 137] is had before the court. The person charged may challenge the judge of the court before whom he is brought for trial under section 170 of the Code of Civil Procedure. In the proceedings under review herein, the petitioner herein challenged Judge Schmidt under said section of the code, and by stipulation of the parties to said proceeding, the trial of said contempt proceedings was had before Judge Bishop of said superior court. In said proceeding, the procedure provided by the sections of the Code of Civil Procedure above cited was followed rather than that applicable to strictly criminal prosecutions.

[2] It is the position of the petitioner that the proceeding against him is a criminal prosecution, and therefore should be entitled, "The People of the State of California", and should be conducted in the name and by the authority of the People as provided by article VI, section 20, of the Constitution, which reads as follows: "The style of process shall be 'The People of the State of California,' and all prosecutions shall be conducted in their name and by their authority."

If therefore the contempt proceeding against petitioner was strictly a "criminal prosecution", it should have been entitled in the name of the People and prosecuted by their authority, that is, it should have been entitled not only in the name of the People but should also have been conducted by the duly constituted prosecuting officers of the county in which the action was tried.

The precise character of a proceeding in contempt of court under the sections of the Code of Civil Procedure

cited above and similar statutes of other states has received frequent attention from the court of this and other jurisdictions.

In *re Morris*, 194 Cal. 63, was a habeas corpus proceeding brought to test the validity of petitioner's conviction of the charge of contempt of court. The petitioner had been prosecuted under the provisions of the Penal Code and found guilty as charged. He contended that his imprisonment under the judgment of conviction in said action was illegal for the reason that the court had no jurisdiction to punish him for contempt of court under the provisions of the Penal Code, as the exclusive jurisdiction to punish for contempt of court was vested in the court whose order petitioner was charged with violating. After reviewing certain features of the case, the court stated, (p. 68), "From these premises petitioner deduces the conclusion that the jurisdiction to punish as a contempt the violation of an order issued by the superior court of Sacramento County is vested solely and exclusively in that court. If we were to regard petitioner's act solely as an offense against the dignity and authority of that court, we would agree with this conclusion, and the cases so hold. [Citing cases.] But these cases do not hold that when an act which is a contempt of court is at the same time a specific criminal offense, denounced as such in the Penal Code, it will not be punishable as such. It was the plain intent of the legislature expressed in the cited code sections to give a double aspect to the wrongful acts there enumerated. In one aspect they are to be regarded as offenses against the dignity and authority of the court, remediable in accordance with the rules prescribed in the Code of Civil Procedure. In the other aspect they are to be regarded as offenses against the peace and dignity of the state of California, and remediable as such in accordance with the rules prescribed in the Penal Code. * * * Plainly the legislature did not intend to take away from the court contemned the power to punish a violator of its orders, but intended rather to provide an [fol. 138] additional remedy which should be in a sense cumulative, and which should be available in the courts possessing the appropriate criminal jurisdiction. These remedies were not intended to be concurrent, but rather cumulative in character. * * * " That case quotes with approval the following statement of the law from the supreme court of Montana (p. 71), " 'When prosecuted under

the Code of Civil Procedure, a contempt of court is not to be regarded as a criminal offense to be prosecuted only by complaint, information, or indictment, as laid down by Section 8 of Article III of the state Constitution, but, rather, as a special proceeding of a criminal character * * * Furthermore, the same acts which may be punished in the summary proceeding are characterized by the lawmaking power as criminal, and the additional remedy by an ordinary criminal action is provided for in Penal Code, Section 293.' (This is the same as our Penal Code Section 166.)" (*State* v. *Clancy*, 30 Mont. 193, 76 Pac. 10.)

The supreme court of Montana has further held that, "When prosecuted under the Code of Civil Procedure, a contempt of court is not to be regarded as a 'criminal offense' to be prosecuted only by complaint, information or indictment as laid down by Section 8, Article III of the State Constitution, but, rather, as a special proceeding of a criminal character—in that sense, it is a public offense, yet it is not one prosecution for which is exclusively controlled by the constitutional limitations circumscribing methods of prosecution of strictly criminal offenses." (*State ex rel. Flynn* v. *District Court*, 24 Mont. 33, 60 Pac. 493.)

The court in In re Morris, supra, page 70, also cites the case of Bessette v. W. B. Conkey Co., 194 U. S. 330, wherein is to be found the following statement: "A contempt proceeding is *sui generis*. It is criminal in its nature, in that the party is charged with doing something forbidden, and if found guilty, is punished. Yet it may be resorted to in civil as well as criminal actions, and also independently of any civil or criminal action."

The precise point here involved was before the supreme court of Illinois and it was stated, "Section 33 of Article 6 of the Constitution provides that all prosecutions shall be carried on: in the name and by the authority of the People of the State of Illinois, and conclude: Against the peace and dignity of the same". The court then held, "The word, 'prosecutions' as used in the constitutional provision invoked, signifies only prosecutions of a public or criminal character and concerns the formal accusation of offenders by presentment or indictment by a grand jury or by information. (State of Illinois v. Froelich, 316 Ill. 77, 143 N. E. 476.) Contempts are not crimes within the meaning of the statute defining misdemeanors. * * * The particular constitutional provision has no application to a proceeding

to punish for contempt." (People v. Jilovsky, 334 Ill. 536, 166 N. E. 108. See also, In re Nevitt, 117 Fed. 448; McDougall v. Sheridan, 23 Idaho 191; State v. American-News Co., (S. D.) 253 N. W. 492.)

The Supreme Court of the United States in In re Debs, 158 U. S. 564, at page 596, makes the following statement, "In brief, a court, enforcing obedience to its orders by proceedings for contempt, is not executing the criminal laws of the land, but only securing to suitors the rights which it has adjudged them entitled to."

While in some decisions we find the direct statement made that a contempt proceeding is a criminal action, we find no authority which holds that a proceeding instituted by affi- [fol. 139] davit under a statute similar to the sections of the Code of Civil Procedure of our state relating to "contempts" has been held to be violative of the constitutional provision requiring all criminal prosecutions to be in the name of the People of the state and by their authority, while the cases are legion in which proceedings of that character have been sustained. In this state this court has invariably sustained such proceedings. (In the Matter of Tyler, 64 Cal. 434; Ex parte Karlson, 160 Cal 378; In re Shuler, 210 Cal. 377; In re San Francisco Chronicle, 1 Cal. (2d) 630, 636; In re Arnold, 204 Cal. 175; Blodgett v. Superior Court, 210 Cal. 1.)

In the San Francisco Chronicle case this court held as follows: "Under this section (Subdivision 7, Section 166, Penal Code) the act prohibited is both a contempt and a misdemeanor. The mere fact that the legislature has seen fit to declare such a contempt also a misdemeanor in no way deprives the court of the power to punish such act as a constructive contempt in a summary proceeding such as this." Our conclusion therefore is that contempt proceedings instituted under the provisions of the Code of Civil Procedure of this state are not strictly criminal actions but are special proceedings of a criminal character, and as such they are not within, or governed by, the requirements of section 20, article VI of the Constitution of this state. They are not thereby required to be brought in the name of the people of the state, nor prosecuted by their authority. Section 1211 of the Code of Civil Procedure is not at variance with said section of the Constitution. Section 1211 provides for the institution of said proceedings by affidavit, and contains no requirement that they be prosecuted by the

authority of the people. [3] In proceedings of this nature, the rule is well settled that, "it is a matter of no importance who institutes the proceedings for contempt, since the alleged contemner is not prejudiced in his defense by the particular mode in which the facts are brought to the attention of the court". (13 Cor. Jur., Contempt, sec. 82, p. 60.) In the present instance, the proceedings were, as we have seen, instituted by the filing of an affidavit by the executive secretary of the bar association of the county of Los Angeles, a committee of three attorneys from said association acting as counsel in behalf of affiant. Thereafter the trial court appointed said attorneys to continue as counsel in the further prosecution of said proceeding. The procedure here followed was in all substantial respects like that approved in the case of Freeman v. City of Huron, (S. D.) 66 N. W. 928, where the court held: "Believing the course adopted in the court below was warranted by abundant authority, and that it did not tend to prejudice the accused in respect to any substantial right, we hold that there was no reversible error in the manner of entitling the affidavit and other papers, and that there was no error in allowing counsel, other than the state's attorney to conduct the prosecution."

[4] On the trial of the accused upon the charges made against him, he demanded a jury trial which was denied him by the trial court. Petitioner contends that he had the constitutional right to trial by jury. Section 1217 of the Code of Civil Procedure provides otherwise, that is, for a trial before the court in which the proceeding is pending. No authority in this state is cited by the petitioner in support of his present contention. It has been the universal practice in this state from its earliest history to try proceedings in contempt by the court without a jury. Scores of cases have been before this court in which the accused [fol. 140] has been tried and convicted of contempt as a result of trials by the court alone, and in not a single instance to which our attention has been called was the point ever raised that the accused was entitled to a trial by jury. "A respondent in contempt proceedings is not entitled to a trial by jury except where a jury trial is expressly provided for by statute, and then only in the particular cases to which the statute applies. The fact that the act constituting contempt may also be an indictable offense does not

affect the rule where the proceeding is not by indictment. The power of the court to punish summarily for contempt has existed from the earliest period of the common law and is not within the application of constitutional provisions guaranteeing a trial by jury, or providing against depriving persons of their liberty without due process of law." (35 Cor. Jur., Juries, sec. 99, p. 194. See, also, 16 R. C. L., p. 205, and cases cited in 48 Am. Dec. 192; 108 Am. St. Rep. 219, 119 Am. St. Rep. 727; Ann. Cas. 1913D 458; 9 L. R. A. (N. S.) 1119.) Finally, upon this point, we quote from the Debs case, supra, where the court, at page 594, states, "But the power of a court to make an order carries with it the equal power to punish for a disobedience of that order, and the inquiry as to the question of disobedience has been, from time immemorial, the special function of the court. And this is no technical rule. In order that a court may compel obedience to its orders it must have the right to inquire whether there has been any disobedience thereof. To submit the question of disobedience to another tribunal, be it a jury or another court, would operate to deprive the proceeding of half its efficiency."

[5] We might also consider under the question of the proper procedure to be followed in proceedings of this character, the contention of petitioner that the affidavit accusing petitioner of contempt of court contains in some instances statements upon information and belief. While it is held in Ex parte Roth, 3 Cal. App. (2d) 226, that an affidavit based solely on information and belief without stating any authentic source of information is not an affidavit of facts prescribed by section 1211 of the Code of Civil Procedure and is insufficient as a basis of jurisdiction to support a warrant or order to show cause or a judgment in a proceeding in constructive contempt, the appellate court in In re Simoniello, 6 Cal. App. (2d) 425, pointed out that the Roth decision had failed to cite and was in conflict with the decision of this court in the case of Golden Gate Consolidated Hydraulic Mining Company v. Superior Court, 65 Cal. 187, and refused to follow the same. It is not contended that all or even the principal allegations in the accusatory affidavit against petitioner were made on information and belief, and therefore the Roth case, even if accepted by us, would not be controlling. However, we are satisfied with the statement of the law as expressed in the case of Golden Gate Consolidated Hydraulic Mining

Company v. Superior Court, as it appears to us that the reasoning therein is more logical and persuasive than that contained in the Roth case. The contention that the affidavit against petitioner gave the trial court no jurisdiction over him in the contempt proceedings by reason of the fact that it contained allegations made upon information and belief cannot therefore be sustained.

[6] We now pass to the second of the three major questions which we perceive are presented in this proceeding, and that is the question of the constitutionality of the last [fol. 141] sentence of subdivision 13 of section 1209 of the Code of Civil Procedure reading as follows: "But no speech or publication reflecting upon or concerning any court or any officer thereof shall be treated or punished as a contempt of such court unless made in the immediate presence of such court while in session and in such a manner as to actually interfere with its proceedings."

In the case of In re San Francisco Chronicle, 1 Cal. (2d) 630, the constitutionality of this provision of said section was squarely before the court, and after an extended examination of the authorities, we held unequivocally that said provision of said section invaded the constitutional powers of the courts, and was, therefore, of no validity. After setting forth the contention of the respondents that, under the provisions of section 1209, subdivision 13 of the Code of Civil Procedure, the publication of any article [whatever its contents] not in the physical presence of the court should not be treated as a contempt, this court on page 634 of the opinion held as follows: "The foregoing contention requires but brief consideration. That portion of section 1209 above quoted has many times been held unconstitutional on the ground that the courts have inherent power to punish for contempts, whether of a direct or constructive nature, and that the legislature cannot constitutionally infringe on that power. (In re Shuler, 210 Cal. 377, 397, 292 Pac. 481; McClatchy v. Superior Court, 119 Cal. 413, 51 Pac. 696, 39 L. R. A. 691; Lamberson v. Superior Court, 151 Cal. 458, 91 Pac. 100, 11 L. R. A. [N. S.] 619; In re Lindsley, 75 Cal. App. 122, 241 Pac. 934; Lindsley v. Superior Court, 76 Cal. App. 419, 245 Pac. 212; see, also, In re Arnold, 204 Cal. 175, 267 Pac. 316; Blodgett v. Superior Court, 210 Cal. 1, 290 Pac. 293, 72 A. L. R. 482; In re Shortridge, 99 Cal. 526, 34 Pac. 227, 37 Am. St. Rep. 78, 21 L. R. A. 755.) What was said by this court in Briggs

v. Superior Court, 211 Cal. 619, 297 Pac. 3, in no way affects the rule above enunciated. It was therein held that the legislature may, in the case of a constructive contempt, provide for the procedure by which such contempt shall be tried and punished, but that case did not hold that the legislature can determine what shall constitute a constructive contempt, or declare that certain acts shall not constitute a constructive contempt. There is obviously a fundamental difference between a statute merely regulating procedure, as was involved in the Briggs case, and one such as section 1209, supra, purporting to affect the power of the courts to punish for contempt."

Ordinarily this citation from so recent a decision in which the prior rulings of this court are set forth in great detail would be considered a sufficient refutation of and a complete answer to the contention of petitioner that by the provisions of this section of the Code of Civil Procedure, he is shielded from prosecution for the publication of said telegram notwithstanding the contemptuous character of said publication. In attempting to sustain the constitutionality of said provision of the Code of Civil Procedure, and to overcome the array of authorities cited in our opinion in the San Francisco Chronicle case, petitioner cites no decision of this court, or any other appellate court of this state, supporting his theory of the law. On the other hand, he concedes that the rule of law enunciated in our former decisions, and reaffirmed so positively and definitely in the San Francisco Chronicle case, and other recent cases, is now and for years past has been the law in the state respecting publication of articles contemptuous in their character, even though not made in the presence of the court. He insists, however, [fol. 142] that the courts of this state are fundamentally wrong in declaring said provision of the Code of Civil Procedure invalid as an invasion of the constitutional powers of the courts, and insists that we should rewrite the law applicable to the power of the court to summarily punish for indirect contempt, and in the revised version, hold that courts under the common law had no inherent power to punish for indirect or constructive contempt—that is, for acts committed without the immediate view and presence of the court; that this lack of power descended to the courts of this country, and, therefore, it always has been and is now within the power of the legislature, not only to provide for the procedure by which constructive contempts

shall be tried and punished, but also to determine what acts shall constitute constructive contempts, and further to declare that certain acts shall not constitute constructive contempts. In support of the proposal to have the law of constructive contempt rewritten, he has taken us back to a period in English jurisprudence antedating the time of Blackstone. He has seized upon the decision of the ancient case of Rex v. Almon, 97 English Reprints 94, and labeled it as the progenitor of a long line of spurious offspring that have infested the courts of both this and the mother country until recent investigation has revealed the irregularity of its birth and the falsity of its doctrine. It is even claimed that the author of the Almon opinion was responsible for the statement in Blackstone that, "The process of attachment, for these and the like contempts, must necessarily be as ancient as the laws themselves. For laws, without a competent authority to secure their administration from disobedience and contempt, would be vain and nugatory. A power, therefore, in the supreme courts of justice to suppress such contempts, by an immediate attachment of the offender, results from the first principles of judicial establishments, and must be an inseparable attendant upon every superior tribunal." (Jones's Blackstone, Book IV, sec. 320.) In the language of an illustrous member of the Supreme Court of the United States (Justice Holmes in Gompers v. United States, 233 U. S. 604, 611) this suggestion "opens up vistas of antiquarian speculation", which while interesting to follow, in the end is productive of no beneficial result. From what appears to be most reliable sources, the opinion in Rex v. Almon, supra, was prepared by Justice Wilmot, then a justice of the King's Bench. He was afterwards Chief Justice of the Court of Common Pleas. While prepared probably about the year 1765, and during the period when Blackstone was delivering his famous course of lectures which thereafter were compiled by him in his Commentaries, this opinion was never adopted by the court or filed as the decision of the case in which it was prepared due to the fact that the case was abandoned before final judgment. It was never made public until the year 1802, some thirty-seven years after its preparation, and therefore years after Blackstone's famous Commentaries were published and in common use. It is surmised by those attacking the doctrine of this decision that because Blackstone and Wilmot were close

friends, they conferred together and probably discussed the question involved in the Almon case and that Blackstone was induced by Wilmot to accept the latter's theory of the law of the inherent power of the court in matters of contempt, and so stated it in his Commentaries as quoted above. To now hold upon mere surmise that Blackstone relied upon the author of the opinion in the Almon case, [fol. 143] and therefore his statement of the law should be discredited, would be extending the doctrine of "antiquarian speculation" beyond all reasonable limits.

But even conceding that petitioner's claims respecting the authority upon which Blackstone based his statement are true, it cannot be disputed that the views expressed by him were then the law in England and continued to be for years thereafter. When the Wilmot opinion in the Almon case was published in 1802, it only strengthened the rule announced by Blackstone. For a long list of cases from the various English courts, extending over a period of time beginning in 1821 and including the year 1925, in which Wilmot's doctrine is applied or in which Almon case is cited with approval, see "Contempt of Court", by Sir John Fox, page 30.

Courts in this country followed the rule adopted by the English courts, and previous to any statute limiting their power, held practically without exception that they had the inherent power to summarily punish for contempt acts committed without their view or presence. However, by act of Congress enacted in the year 1831 (Rev. Stats., sec. 725; Jud. Code, sec. 268; U. S. C. A. Title 28, sec. 385) it was provided that, "The said courts [United States Courts] shall have power to punish by fine or imprisonment at the discretion of the court, contempts of their authority. Such power to punish for contempts shall not be construed to extend to any cases except misbehavior of any person in their presence, or so near thereto as to obstruct the administration of justice." This statute was followed by legislation in several of the states in which similar restrictions were attempted to be placed upon the courts of their respective states. This legislation was at first generally sustained by the courts. However, in 1918, the Supreme Court of the United States, notwithstanding the existence of the statute of 1831, sustained the conviction of the editor of a newspaper upon a charge of contempt of court based upon the publication of certain articles in said news-

paper. (Toledo Newspaper Co. v. United States, 247 U. S. 402.) The effect of this decision was to declare inoperative and ineffective for any purpose the limitation attempted by Congress to be placed on the power of the court to summarily punish for an indirect contempt, that is, to punish an act committed without the view and presence of the court. This decision has been followed generally by the United States courts. (Francis v. People of Virgin Island, 11 Fed. [2d] 860, 863-5; In re Independent Publishing Company, 240 Fed. 849; U. S. v. Providence Tribune Co., 241 Fed. 524; U. S. v. Markewich, 261 Fed. 537; U. S. v. Sanders, 290 Fed. 428.)

The supreme court of the state of Arkansas had, previous to the decision in the Toledo Newspaper case, held that the legislature was without power to limit the jurisdiction of the courts to punish for acts of contempt committed without the presence of the court. (State v. Morrill, 16 Ark. 365.) During and since the reassertion by federal judges of summary powers as to publications, the courts of the following states, seventeen in number, have sanctioned the rule announced in the Toledo Newspaper case—Alabama, Arizona, Connecticut, Florida, Georgia, Idaho, Indiana, Maryland, North Dakota, Oklahoma, Rhode Island, South Dakota, Tennessee, Texas, Utah, Vermont, and Virginia. The courts of eight other states have expressed views which indicate that they are in harmony with the rule announced by the Supreme Court of the United States. [fol. 144] They are Iowa, Kansas, Minnesota, Mississippi, Nevada, Oregon, Wisconsin, and Wyoming. We have already shown the attitude of the courts of this state upon this question. In a few states the subject seems not to have been considered. Only four states out of the forty-eight states of the Union seem definitely committed to a contrary doctrine. They are Pennsylvania, New York, South Carolina and Kentucky. In each of these states, the statutes in question are over one hundred years old. (For a further discussion of this subject and the authorities cited in support of the foregoing statements see 28 Columbia Law Review, p. 542.) From the foregoing it will appear that the overwhelming weight of authority in this country supports the decision of this state rendered in the San Francisco Chronicle case, and those cited in that opinion. While we commend the diligence and industry displayed by counsel in their investigation and consideration of the subject, we find ourselves

unable to agree with them in their contention that the legislature may limit the power of the court to summarily punish for contempt acts committed without the view and presence of the court. The last sentence of subdivision 13 of section 1209 of the Code of Civil Procedure above quoted is unconstitutional on the ground that the courts of the state have inherent power to punish for contempt whether of a direct or constructive nature, and the legislature cannot infringe on that power.

[7] In considering the third major question presented by the record in this proceeding; it is important that we keep in mind the nature of the particular proceeding before us, and not confuse it with the ordinary appeal from judgment, nor with an original proceeding in contempt before a trial court. On petition to review the judgment of the trial court, it is definitely settled that the sole question before the reviewing court is one of jurisdiction of the trial court to render the judgment under review. If it be determined that in the rendition of said judgment the trial court acted within its jurisdiction, then the inquiry ends, and the only order the reviewing court is authorized to make is one affirming the proceedings of the trial court. On the other hand, should it appear from the record as certified to us that the court either had no jurisdiction to pronounce said judgment, or exceeded its jurisdiction in doing so, then the proceedings should be annulled. (Sec. 1075, Code Civ. Proc.) Other than as just indicated, the writ of certiorari will not be granted to review errors of law (People v. Latimer, 160 Cal. 716), or mere questions of fact. (White v. Superior Court, 110 Cal. 60.) [8] However, in passing upon the question of the trial court's jurisdiction, the reviewing court may consider the evidence before the trial court for the purpose of determining whether it was sufficient to give that court jurisdiction to render its judgment finding the accused guilty of contempt, and in case the court finds that the evidence is insufficient to sustain the conviction it will annul the judgment. (McClatchey v. Superior Court, 119 Cal. 413; Hotaling v. Superior Court, 191 Cal. 501, 506, and Titcomb v. Superior Court, 220 Cal. 34, 44.) But in such a case, the review of the evidence is limited to determining whether there was any substantial evidence before the trial court to sustain its jurisdiction. The power to weigh the evidence rests with the trial court. (Daily v. Superior Court, 4 Cal. App. [2d] 127, 134; Mc-

Farland v. Superior Court, 194 Cal. 407; In re Brambini, 192 Cal. 19; Strain v. Superior Court, 168 Cal. 216, 223; White v. Superior Court, 110 Cal. 60, 64; Imperial Water Company v. Board of Supervisors, 162 Cal. 14.) There [fol. 145] is nothing contrary to this rule to be found in In re Buckley, 69 Cal. 1, 3, nor in Hotaling v. Superior Court, supra, or in any other case to which our attention has been called, as all of those cases were original proceedings before this court. In proceedings of that nature, the same rule governs the trial court in contempt proceedings is applicable to this or any appellate court at the hearing of contempt proceedings originally brought in such courts. [9] It has repeatedly been held that an accused on trial for contempt must be proved guilty beyond a reasonable doubt. But such rule, as will be seen from the authorities cited above, has no application in a proceeding such as the one before us, to review the judgment of the trial court in finding the accused guilty of contempt.

In considering the evidence before the trial court in the light of the rule just stated, it is our sole duty to determine whether such evidence is of sufficient substantiality to support the judgment of conviction, or as stated in Daily v. Superior Court, supra (p. 124): "In the proceedings before us, the extent of our power is to inquire whether there was any evidence before the trial court sustaining its jurisdiction." The evidence in this matter is comparatively simple. The case of Walker v. International Longshoremen's Association, District Local 38-82, Inc., No. 420356, mention in the first paragraph of this opinion, was in fact a contest between the American Federation of Labor, hereinafter referred to as the A. F. of L. and the Committee for Industrial Organization, hereinafter referred to as the C. I. O., over the possession of the hiring hall maintained at San Pedro, California, for the longshoremen at said port. Petitioner was the president of the International Longshoremen's and Warehousemen's Union, a C. I. O. organization, the jurisdiction of which organization extended to all its subsidiary unions on the Pacific Coast. While not a party to said action, petitioner, as the president of the C. I. O. organization on this coast, was directly and vitally interested in the result thereof, and was particularly interested in seeing that the defendant prevailed in said action. The action was tried, and the court ruled in favor of the plaintiffs in said action, and appointed a receiver to have charge of the hiring

hall, which, as we have seen, was the subject of the controversy between the parties thereto. The action was one which attracted great public interest and to which the newspapers of the county of Los Angeles and other parts of the state gave wide and extensive publicity. The judgment in said action was rendered on January 21, 1938. The petitioner was then in San Francisco, and on January 24th, from his headquarters in that city he dictated to his stenographer a telegram to the secretary of labor and gave a copy thereof to James D. O'Neil, a trained newspaper man of more than twenty years' standing, who was in charge of the publicity bureau maintained by the petitioner as the executive officer of the C. I. O. in the city of San Francisco. O'Neil gave a copy of said telegram to one of the city papers of San Francisco and on that day and the following day that portion of the telegram set forth in the findings of the trial court was published in the metropolitan papers of the city of San Francisco and Los Angeles and elsewhere in this state.

Upon this evidence the trial court found, "That at or about the time of the sending of said telegram, the defendant, Harry R. Bridges, caused a copy thereto [thereof] to be given to one James D. O'Neil for the purpose and with the intent that the contents of the said telegram should, and [fol. 146] would be furnished to and published in the newspapers on the Pacific Coast and elsewhere." It is contended by petitioner that the evidence does not support said finding. In discussing the evidence respecting the publication of said telegram, the trial court reasoned as follows: "He [the petitioner] dictated it to his stenographer, his secretary, and told her to send it. There you have an express command. But if you do not [have] an express command respecting publicity, you are going to have publicity, because of the telegram itself. In dictating that telegram to his secretary, he did not need to tell her in words to send it, and certainly she knew when she sent the telegram what to do with a copy of it because it was an established custom. When the copy of that telegram was put in the hands of a man, who is in the organization for the purpose of giving the telegram—which is a news story in anybody's language—publicity, it was just the same as sending it direct to the newspapers."

[10] We are in entire agreement with the conclusion reached by the trial court in holding the petitioner respon-

sible for the publication of said telegram. Mr. O'Neil testified that he handled the publicity of the C. I. O. for the West Coast and had an office three doors from the reception room of the C. I. O. in San Francisco, and four doors from Mr. Bridges' office; that Mr. Bridges "was news wherever he goes," that he [O'Neil] handled the publicity of telegrams released or received by Mr. Bridges, that copies of all telegrams "that had anything to do with the C. I. O., most of them came to my desk", and that he then determined whether any particular telegram was newsworthy and susceptible of being sent to the press for publication. We think that there can be no doubt from the testimony of Mr. O'Neil that petitioner not only had every reasonable ground to believe that his telegram would be given to the public press for publication but that the regulations of his organization made it the duty of O'Neil to see that the papers were apprised of the telegram in order that publicity might be given to its contents. In our opinion, there was ample evidence to sustain the finding of the trial court that petitioner gave to O'Neil the copy of the telegram sent to the secretary of labor with the intent that the contents thereof would be furnished to and published in the newspapers on the Pacific Coast and elsewhere.

[11] Finally petitioner contends that his act in publishing the telegram, even conceding that he was responsible for its publication, did not constitute a contempt of court. He claims in the first place that the final judgment in the action of Walker v. International Longshoremen's Association had been entered some days prior to the publication of said telegram and therefore the action to which he referred in his telegram was no longer pending. In assuming that the Walker action had been finally disposed of, and was therefore no longer pending, petitioner is in error. The time for moving for a new trial in said action had not yet expired, and until the action had reached that stage, it cannot be said that it had ceased to be a pending action in that court. (Sec. 1049, Code Civ. Proc.) The case was still before Judge Schmidt at the time of, and long after, the publication of said telegram.

[12] This brings us to the question whether the publication of that portion of the telegram set out in the findings, respecting the decision of Judge Schmidt, while the action in which said decision was rendered was pending, consti-

tuted a contempt of court. It is not necessary for us to restate the contents of the published article in full. It con- [fol. 147] tains the following statements: "This decision is outrageous." "Attempted enforcement of Schmidt decision will tie up port of Los Angeles and entire Pacific Coast." "International Longshoremen's & Warehousemen's Union, representing over 11,000 of the 12,000 longshoremen on the Pacific Coast, does not intend to allow state courts to override majority vote of members in choosing its officers and representatives." The published statement was not only a criticism of the decision of the court in an action then pending before said court, but was a threat that if an attempt was made to enforce the decision, the ports of the entire Pacific Coast would be tied up. Furthermore, it contained a direct challenge to the court that 11,000 longshoremen on the Pacific Coast would not abide by its decision. When these statements are considered in connection with the extensive publicity that had already been given to the pending action, and the prominent position of the petitioner as the executive officer of an organization to which 11,000 longshoremen on the Pacific Coast belonged, we think that there can be no question that their publication in the metropolitan papers on the Pacific Coast, and particularly those in the county of Los Angeles in which said court was held, tended materially to affect the orderly administration of justice in the case to which reference was made and which was then pending in said court. If such would be the effect of such publication, and in our opinion, that was its effect, then the act of publishing such statements was a contempt of the court in which such action was pending. (In re Shuler, 210 Cal. 377; In re San Francisco Chronicle, 1 Cal. [2d] 630; Bee Publishing Co. v. State, 185 N. W. 339; State of Nebraska v. Lovell, 222 N. W. 625; Toledo Newspaper Company v. U. S., 247 U. S. 402; People v. Wilson, 64 Ill. 195 [which case this court cited with approval in the San Francisco Chronicle case]; Patterson v. Colorado, 205 U. S. 454; Sinclair v. United States, 279 U. S. 749, 764.)

[13] In these cases it was held that if the publication or act in question had a "reasonable tendency" to interfere with the orderly administration of justice in pending actions before judicial tribunals, it amounted to a contempt of court and might be punished as such. The Patterson case, supra, clearly states that the test to be applied in determining

whether a party is guilty of contempt is whether the act complained of had a "reasonable tendency" to interfere with the orderly administration of justice. The opinion in that case was written by Mr. Justice Holmes and was cited with approval in the Shuler case [In re Shuler, supra, p. 403], and this court quoted from that case as follows [page 462]: "In the next place, the rule applied to criminal libels applies yet more clearly to contempts. A publication likely to reach the eyes of a jury, declaring a witness in a pending cause a perjurer, would be none the less a contempt that it was true. It would tend to obstruct the administration of justice, because even a correct conclusion is not reached or helped in that way, if our system of trials is to be maintained. The theory of our system is that the conclusions to be reached in a case will be induced only by evidence and argument in open court, and not by any outside influence, whether of private talk or public print.

"What is true with reference to a jury is true also with reference to a court. Cases like the present are more likely to arise, no doubt, when there is a jury and the publication may affect their judgment. Judges generally, perhaps, are less apprehensive that publications impugning their own [fol. 148] reasoning or motives will interfere with their administration of the law. But if a court regards, as it may, a publication concerning a matter of law pending before it, as tending toward such an interference, it may punish it as in the instance put. When a case is finished, courts are subject to the same criticism as other people, but the propriety and necessity of preventing interference with the course of justice by premature statement, argument or intimidation hardly can be denied."

In the case of Sinclair v. United States, 279 U. S. 749, a somewhat similar statement was made by the court, but in language as follows [Page 764]: "But the situation is controlled by the reasonable tendencies of the acts done, and not by the extreme and substantially impossible assumptions on the subject. Again, it is said that there is no proof that the mind of the judge was influenced or his purpose to do his duty obstructed or restrained by . . publications and therefore there was no proof tending to show the wrong complained of. But here again not the influence upon the mind of the particular judge is the criterion but the reasonable tendency of the acts done to influence or bring about the baleful result is the test. In other words, having regard

to the powers conferred, to the protection of society, to the honest and fair administration of justice and to the evil to come from its obstruction, the wrong depends upon the tendency of the acts to accomplish this result without reference to the consideration of how far they may have been without influence in a particular case. The wrongdoer may not be heard to try the power of the judge to resist acts of obstruction and wrongdoing by him committed as a prelude to trial and punishment for his wrongful acts."

Further on in the opinion, the court reiterates that, "The reasonable tendency of the acts done is the proper criterion." While this opinion was written by Justice McReynolds, it was concurred in by Justice Holmes. We mention Justice Holmes's participation in these two cases, as petitioner has cited opinions by this illustrious jurist, probably a majority of which were dissenting opinions, simply to show that while in other cases upon apparently different statements of fact, Justic Holmes has expressed certain conclusions upon which petitioner relies in support of his contention that the "reasonable tendency of the act done" is not the proper criterion to be applied in such cases, at least in these two cases, Justice Holmes has approved the "reasonable tendency" criterion.

We have called particular attention to these cases from the Supreme Court of the United States, in addition to those from our own court, for the reason that petitioner contends that the "reasonable tendency" doctrine is not the true test to be applied in determining whether the act done constituted contempt of court, and in support of his contention, he has cited opinions, both majority and dissenting, to be found principally in the Reports of the United States Supreme Court. The tests which are mentioned in various of these opinions, any one of which petitioner insists is the only true and proper test, and should, therefore, be applied in this case, are referred to by different judges as the "inherent and dangerous tendency", the "clear and present danger", and "the actual obstruction principle". It is sufficient to say in answer to petitioner's contention that none of these tests has been applied by the courts of this state, and that neither the Patterson nor the Sinclair case, which are in accord with the decisions of the courts of this state, has been overruled by the court in which they were [fol. 149] rendered. We are, therefore, content to rest our decision upon the "reasonable tendency" test in determin-

ing whether the publication or act done constituted a contempt of court. The application of this test to the publication by petitioner of that portion of said telegram recited in the findings of fact of the trial court, clearly renders said publication a contempt of court.

[14] Petitioner relies with much earnestness upon his constitutional right of free speech to justify his publication of the quoted portion of the telegram sent by him to the secretary of labor. A large number of pages of the briefs in behalf of petitioner are devoted to the right of an individual to freely speak his views and to the importance of this constitutional right of free speech. It may be conceded that all that has been said in these briefs as to the importance of the right of free speech and of a free press in a democracy meets with the approval of this court. In fact, we are in thorough accord with petitioner's claim that the right of free speech and of a free press are among the greatest bulwarks of the freedom which, as citizens of this country, we enjoy. But as was said in a recent decision of the Supreme Court of the United States, "the right [of free speech] is not an absolute one, and the State in the exercise of its police power may punish the abuse of this freedom." (Stromberg v. California, 283 U. S. 359, 368.)

This contention of petitioner that he is protected in the publication of said telegram by the constitutional right of freedom of speech is in our opinion completely answered by what we said in In re Shuler, supra, at page 402: "The constitutional guaranties of freedom of speech and of the press do not, in our opinion, and in the light of the authorities which we are about to cite, go so far as to protect the citizen in making such comment by either spoken or written utterances with respect to causes pending before courts of justice, as have for their purpose and manifest tendency an attempted interference with the orderly administration of justice before such tribunals and in respect to causes pending and in course of conduct therein." In that case, as in the case now before us, the petitioner attempted to justify his animadversions of the court by the claim that his utterances were protected by the right of free speech. In an opinion concurred in by all the members of this court we held that his claim was without merit. The same conclusion must be followed in this action respecting petitioner's claim of immunity.

In addition to the three questions hereinbefore discussed,

petitioner has raised other questions which may be regarded as of minor importance but which are of sufficient consequence to require answers.

[15] He contends that as he did not personally cause said telegram to be published he is not liable for criminal contempt for the act of his agent in publishing the same without his direction. If the evidence supported the facts recited in this statement, we would have no hesitancy in sustaining said contention. But as we have seen, the trial court found that petitioner caused his agent to make said publication, and we have held that this finding is supported by substantial evidence in the record. Petitioner having directed the publication of said telegram by his agent, is personally liable for any infraction of the law due to said publication equally with his agent.

Petitioner further contends that the sending and publication of said telegram by him as a labor official to the secretary of labor respecting labor matters is protected by the [fol. 150] constitutional guarantee to engage in a lawful occupation. We thoroughly agree with petitioner that the sending of a telegram to the secretary of labor was within his constitutional rights, and one might go further and hold that it was within his duties as the executive head of the union affected by the decision of Judge Schmidt to inform the secretary of labor of said decision, but he was not charged nor punished for the sending of the telegram. It was the publication of the telegram in the manner hereinbefore set forth, and not the sending of it, that constituted the offense of which he was found guilty.

[16] Finally petitioner contends that the trial court exceeded its jurisdiction in adjudging petitioner guilty of contempt of court because it had no jurisdiction to make the order in the original action out of which action the alleged contempt arose. This contention is based upon what petitioner conceives to be the legal effect of federal legislation establishing the National Labor Relations Board and conferring upon that board certain powers respecting labor disputes. We do not understand that that legislation has taken from the state court jurisdiction of disputes of the nature of that involved in the case of Walker v International Longshoremen's Association which was pending before Judge Schmidt's court. Petitioner has cited in support of this last contention the case of Fur Workers Union No. 72 v. Fur Workers Union, 105 Fed. (2d) Advance Sheet No.

1, page 1, decided by the United States Court of Appeals, District of Columbia, on March 27, 1939. We find nothing in the decision of that case which tends to support the contention of petitioner that the Superior Court of the County of Los Angeles was without jurisdiction to hear or decide the issues involved in the Walker v. International Longshoremen's Association case.

In considering the questions herein discussed we had access, not only to the able briefs and arguments of counsel in this case, but also those in the two cases, entitled, The Times-Mirror Company, a Corporation, et al. v. Superior Court, and numbered respectively L. A. 16928, and L. A. 16929, now before us on petitions to review judgments of contempt. All three of these cases were argued with the understanding that both the arguments and briefs filed in any one of said cases either by the respective parties or by amici curiae might be used by the court in the decision of any one or more of the other cases. It was in pursuance of this understanding that we have had the benefit of the argument and briefs of the Times-Mirror cases in this decision of the present one.

For the reasons herein stated we are of the opinion that the proceeding adjudging petitioner guilty of contempt of court must be affirmed.

It is therefore ordered that the judgment of the trial court be and the same is hereby affirmed.

Curtis, J.

We concur. Shenk, J.; Nourse, J., pro tem.; Waste, C. J.; Houser, J.

DISSENTING OPINION

The petitioner published a statement concerning Judge Schmidt and the merits of a case which had not been finally decided. Such an act, the legislature has declared, shall not constitute a contempt of court. In my opinion, judicial officers have no inherent power to punish for a constructive contempt, and the statute which provides that "no speech or publication reflecting upon or concerning any court or [fol. 151] officer thereof shall be treated or punished as a contempt of such court unless made in the immediate presence of such court while in session and in such manner as to actually interfere with its proceedings" (sec. 1209, Code

Civ. Proc.) is constitutional. This law, passed in 1891, expresses the constitutional guarantees of free speech and a free press and should be upheld.

The California statute is in substantially the same form as those of many other states upon this subject. Unquestionably the legislative purpose has been to prevent abuses of uncontrolled power. However, such enactments, with few exceptions, have been swept aside as unconstitutional efforts to trench upon judicial authority. These decisions are posited upon the assumption that the right to hold one guilty of either a direct or a constructive contempt, summarily and without a jury trial, is "inherently necessary" to judicial administration and is founded upon "immemorial usage" at common law. Yet neither the declarations of the courts in support of their dignity and independence, nor the enactments of legislative bodies upholding freedom of speech and the press, have settled the seemingly irreconcilable conflict. Whenever vital issues affecting the public interest are presented for adjudication and editors or citizens of positive views comment upon either the facts of a case or the principles which are claimed to govern the result, the question whether a judge may punish for contempt usually arises, Phoenix-like, from the ashes of earlier controversies.

Modern legal scholars have made an extended study of the principles upon which the law of contempt by publication rests and conclude that much of what has been judicially relied upon as authority to punish for such an act is fiction. The writers of an exceptionally well-considered article in the Columbia Law Review, after a most thorough investigation, assert that the rules of the common law do not support the claims which have been made for them. (Nelles and King, Contempt by Publication in the United States, 28 Col. L. Rev. 401, 525.) In short, it now appears that in this branch of the law, the courts have built a structure of judicial reasoning upon the sands of precedents which do not exist.

The first enactment upon the subject of contempts was that of the statute of Westminster (13 Ed. 1, c. 39) which was adopted seventy years after the date of Magna Charta. This statute concerns contempts in resisting the process of the King's courts, a class defined by Blackstone as consequential contempts, and it seems most unlikely that this legislation would have been enacted if the power to punish

such offenses constituted a part of the law of the land which existed so long before Magna Charta as to be considered a maximum of jurisprudence. In any event, the first newspapers were established 350 years after the date of Magna Charta, and the offense of contempt by publication must, therefore, be of much later origin.

Early in our own national history the question was presented by a case in Pennsylvania which arose out of the campaign for ratification of the federal Constitution. A newspaper editor named Oswald, who was the leader of the opposition to ratification, was arrested for a libel. He countered in the columns of his newspaper with the charge that the prosecution was prompted by political motives, and for this publication he was ordered to show cause why he should not be attached for contempt. In support of the attachment counsel relied upon Blackstone and a dictum in [fol. 152] Roach v. Garvan, 2 Atkyns 469 (1742), which was a decision by the English Court of Chancery not based upon any common law precedent. (See Fox, Contempt of Courts, p. 22.) Chief Justice McKean of Pennsylvania, in deciding the case, stated that "proceeding by attachment is as old as the law itself and no act of the legislature, or section of the Constitution, has interposed to alter or suspend it" and he concluded that since the Constitution guaranteed trial by jury only "as heretofore," the summary procedure was proper. (Respublica v. Oswald, 1 Dallas 319.)

According to Blackstone's Commentaries, either "speaking or writing contemptuously of the Court or Judges, acting in their judicial capacity" or "printing false accounts of causes then pending in judgment" was punishable by immediate attachment. In such a proceeding, Blackstone said, the court's power "results from the first principles of judicial establishments and must be an inseparable attendant upon every superior tribunal." (4 Blacks. Com. 284 et seq.) Largely upon the authority of Blackstone's views, the Pennsylvania court concluded that summary process and trial was proper in all contempt proceedings. Oswald was fined and imprisoned, but upon his release he memorialized the legislature for the impeachment of the justices of the Supreme Court. After consideration of the charges a resolution was adopted denying articles of impeachment. Later a proposal to define the nature and extent of contempts was introduced in the legislature, but the measure was defeated

by a Federalist majority. (See note to Respublica v. Oswald, supra, p. 329 et seq.)

The concept of freedom of the press, stated by Blackstone, is completely foreign both in time and place to the fundamental principles of American institutions. The doctrine that "the liberty of the press * * * consists in laying no *previous* restraints upon publications and not in freedom from censure for criminal matter when published" (5 Blacks. Com. 151) is a statement of the British law at a time when seditious libel was punishable as a crime; it is not the interpretation of a constitution. Moreover, that law has been very differently declared in the last one hundred and twenty-five years. (See Chafee, Freedom of Speech, [1920] 8 et seq.)

It now appears probable that Blackstone's notions of "immemorial usage" concerning the authority of a court to summarily punish for contempt by publication were based upon the draft of an "opinion" in The King v. Almon written by Wilmot, J., about 1765, three or four years before the publication of the Commentaries. (See Fox, Contempt of Courts, p. 21.) A rule nisi had been obtained to attach John Almon, a bookseller, for publishing a libel on the Chief Justice, Lord Mansfield, and after argument Wilmot prepared an opinion. In answer to the contemnor's claim that summary procedure by attachment was inappropriate, he stated: "The power which the courts in Westminster Hall have of vindicating their own authority is coeval with their first foundation and institution; it is a necessary incident to every court of justice, whether of record or not, to fine and imprison for a contempt to the court, acted in the face of it, 1 Ventris I, and the issuing attachments by the supreme courts of justice in Westminster Hall for contempts out of court stands upon the same immemorial usage as supports the whole fabric of the common law; it is as much the lex terrae and within the exception of Magna Charta as the issuing of any other legal process whatsoever. * * * And though I do not mean to compare and contrast attach-[fol. 153] ments with trials by jury, yet truth compels me to say that the mode of proceeding by attachment stands upon the very same foundation and basis as trial by juries do—immemorial usage and practice. (Wilmot's Notes, p. 254.)" (Fox, supra, pp. 7, 8.)

The proceeding against Almon was aborted by a procedural defect and was subsequently abandoned with a

change of ministry; consequently, Wilmot's decision was never delivered. However, almost 40 years later it was published with his other papers, and has been cited and relied upon as a correct statement of the law ever since. Sir John Fox comments upon it as follows: "Never pronounced in court, this extrajudicial opinion did not possess the binding effect of a decision, but it acquired the singular distinction of becoming a leading authority by citation and approval in subsequent cases, the earliest of which was decided fifty-six years after the opinion was written. No higher testimony to Mr. Justice Wilmot's reputation for learning and ability could be given than this that his opinion was adopted by succeeding judges without question and without examination of earlier authorities." (Fox, supra, p. 8.)

Here is one of the strangest stories in the history of the law. The most remarkable part of it is that the earlier authorities, with the exception of the decisions of the Star Chamber, required prosecution by indictment, presentment and arraignment for contempts committed by "strangers" to the court, and the contemnor was entitled to a trial by jury. (See Solly-Flood: "Prince Henry and Chief Justice Gascoigne," Transactions of the Royal Historical Society, vol. 3, N. S., p. 47; Fox, supra, p. 227 et seq.) But Blackstone followed the posthumous views of his friend Wilmot, and the supreme court of Pennsylvania in the Oswald case based its decision upon a doctrine which was historically incorrect. Thus the opinion of an English judge in an undecided case was given the authority of a precedent in the new country.

A decade later the same question was reviewed in the case of Respublica v. Passmore, 3 Yeates, 440. Passmore, by posting a notice in the exchange room of the city tavern, denounced his adversary in a pending appeal as "a liar, a rascal and a coward." For this he was attached for contempt and was found guilty and sentenced to fine and imprisonment. The controversy then passed from the court to the legislature, but by this time the Federalists were in a minority, and articles of impeachment were preferred against the three Federalist judges who had found Passmore guilty. In the state senate the vote was 13 to 11—two votes short of the necessary two-thirds for impeachment. (See Nelles and King, supra, p. 414.) But shortly afterward a statute was passed restricting the judicial power

over contempts to its true historic limits: (1) official misconduct of court officers; (2) disobedience of process; and (3) misbehavior, in the actual presence of the court which actually obstructs the administration of justice. (1808-09 Pa. Acts, c. 78, p. 146.) Although the statute has since been amended, it has stood as the law of Pennsylvania from the date of its enactment to the present time. (1920 Dig. Pa. Stat. L., secs. 5484-5488.)

The history of legislation in New York concerning punishment for contempt has a similarly interesting background. In 1803, Chancellor Kent asserted the same broad summary power which had been maintained by Chief Justice McKean in Pennsylvania. (People v. Freer, 1 Caines 518.) However, the power was moderately used in New [fol. 154] York, and only once did public clamor arise over its exercise. That occasion grew out of an attachment of one Yates, who was charged with illegally practicing as a solicitor—a contempt which is within the historic scope of the power to punish summarily. Yates sought habeas corpus in the supreme court and the writ was dismissed, after which he appealed to the "Court for the Trial of Impeachments and the Correction of Errors," which consisted of the justices of the supreme court and the members of the state senate. That body reversed the supreme court and held that Yates should have been discharged. (Case of [illegible] V. N. Yates, 6 Johns, 337.)

Yet it was not until 1829 that New York limited the judicial power in contempt proceedings. By legislation then adopted, with the exception of permitting punishment of "a false, or grossly inaccurate report of its proceedings," the summary powers of the New York courts were confined to direct contempts tending to interrupt their proceedings and any resistance to or disobedience of their orders or process. (N. Y. Rev. Stat. of 1829, part 3, chap. 3, title 2, art. 1, sec. 10.) Historically, it is said that this statute reflects the views of Edward Livingston, who considered the power of summary punishment to be repugnant "to all the fundamental principles which secure private rights in the administration of justice," and argued that there is no true necessity for a court to undertake the punishment of its own offenders. (See Nelles and King, supra, p. 419.)

The early development of the contempt power in the federal courts presents a true parallel to the Pennsylvania experience. Section 17 of the Judiciary Act of 1789 empow-

ered the courts of the United States "to punish by fine or imprisonment * * * all contempts of authority in any cause or hearing before the same." There were several cases under this provision containing intimations of "inherent" power (U. S. v. Hudson, 7 Cranch 32; (Anderson v. Dunn, 6 Wheat. 204, 227), but the first decision directly passing upon a conviction for contempt by publication, summarily imposed, did not arise until the notorious Peck-Lawless controversy in 1826.

With the acquisition of the Louisiana territory earlier in the century, there was a wild speculative scramble for land claims. Although public lands in the territory had not yet been opened up for preemption, previous grants by Spanish and French authorities were recognized. Fraud and forgery in efforts to prove such grants were rife, and there was great public interest in litigation over land claims. Lawless, who was an attorney representing a large group of claimants, appeared as counsel in a case brought to test the validity of such a grant. Judge Peck, the federal judge for Missouri, decided one case against him, and Lawless countered with a newspaper article criticizing the decision. Judge Peck promptly attached Lawless for contempt and, after a hearing, found him guilty, imposing a sentence of one day's imprisonment and suspension from practice for 18 months.

Lawless, who had influential friends in Washington, then memorialized congress for Peck's impeachment. After a trial which consumed a large part of the session of 1830-31, Judge Peck was acquitted by a narrow margin. (See Stansbury, Trial of James H. Peck [1833].) However, the episode immediately precipitated legislation on the question of summary judicial power in contempt proceedings. A federal statute enacted in 1831 provided that "the power of the several courts of the United States to issue attachments and inflict summary punishments for contempts of court shall not be construed to extend to any cases except the misbehavior of any person or persons in the presence [fol. 155] of said courts, or so near thereto as to obstruct the administration of justice, the misbehavior of any of the officers of the said courts * * * and the disobedience or resistance by any officer * * * party, juror, witness or any other person * * * to any lawful writ, process, order, rule, decree or command of the said courts."

The words "misbehaviour * * * so near thereto as to

obstruct the administration of justice" were inserted to include, within the definition of contempts, breaches of the peace near the court house which might interrupt judicial proceedings. (See Nelles and King, supra, p. 530.) By other provisions of the statute, acts formerly designated as contempts, such as attempts to influence jurors, witnesses or officers or attempts to obstruct or impede the administration of justice by threats or force were made punishable by the regular process of indictment and trial. Act of March 2, 1831, c. 99; 4 Stat. 487; now U. S. Code, secs. 385 and 241. Again, by legislation, summary judicial power was expressly restricted to its true historic limits.

General public agreement with the policy exemplified by the federal statute and those of Pennsylvania and New York is indicated by the fact that numerous other states soon adopted similar laws. By 1860, 23 of the 33 states of the Union had adopted acts limiting the summary power to punish for contempt. (See Nelles and King, supra, p. 533.) And with the exception of New Hampshire and Arkansas, these limitations were respected in every jurisdiction where they were questioned. (Ex parte Poulson, Fed. Cas. No. 11350, 1205-9 [1835]; U. S. v. Holmes, Fed. Cas. No. 15383 [1842]; Stuart v. People, 3 Scam. 395 [Ill. 1842]; Ex parte Hickey, 4 Smedes & Marshall 751 [Miss. 1844]; State v. Dunham, 6 Iowa 245 [1858]; Brown & Calkins Case [1854], see Ashbaugh v. Eau Claire, 97 Wis. 1, 11; Foster v. Comm., 8 Watts & Sergeant 77 [Pa. 1844].)

The New Hampshire court held that the writer of an article constituting a contempt might be punished summarily, notwithstanding the statute of that state, but in reaching that conclusion it relied upon Respublica v. Oswald, supra, which, as has been pointed out, followed the fallacious doctrine of Blackstone based upon the writing of Judge Wilmot. (Tenney's Case, 23 N. H. 162, 185.) This decision has not attracted general attention and is referred to infrequently. However, the case of State v. Morrill, 16 Ark. 384, like The King v. Almon, supra, has had an unusual influence in shaping the law concerning contempts. It has been cited and relied upon as an authority in many states, including California, and as it is the first decision in the United States which set aside a statute limiting a court's jurisdiction over alleged contempts, it merits particular attention.

In an editorial in his newspaper, Morrill intimated that the justices of the state supreme court had been guilty of

bribery in a criminal case. They summoned him to show cause why he should not be adjudged in contempt. In a lengthy opinion, which added little that was new to the subject, the court sustained its power to punish summarily notwithstanding legislative limitation to specified acts "and no others". By constant repetition, factitious weight was given to the assumption that such power is inherent, necessary, and traditional. The court quoted at length from Blackstone, Roach v. Garvan, supra; Respublica v. Oswald, supra; The King v. Almon, supra, and from earlier Arkansas cases of direct contempt. Cases which had sustained the limitations placed by congress upon the federal courts were [fol. 156] held inapplicable upon the ground that the lower federal courts were the creatures of congress and not of the Constitution. The Peck-Lawless case was distinguished upon the ground that Lawless had "published a criticism upon the opinion, not impugning the motives or charging corruption upon the judge, but discussing the correctness of the opinion" and "the distinction between constitutional freedom, and licentious abuse of the press, is now so well understood in this country, that no American judge could consider himself authorized to punish as for contempt, authors of publications of the character of that made by Mr. Lawless".

Morrill was finally discharged upon filing a response under oath denying any intention to commit a contempt. (State v. Morrill, 16 Ark. 412.) But this decision led the way for a series of cases which cast off the legislative fetters in almost every jurisdiction where they had been imposed. (See Nelles and King, supra, pp. 554, 562.) The basis for the asserted authority of a court to ignore statutory regulation of the power to summarily punish for contempt was, most frequently, said to be that it is unconstitutional as trenching upon an inherently necessary and immemorially exercised power. (See for example, State ex inf. Crow v. Shepherd, 177 Mo. 205; State v. Frew, 24 W Va. 416.) Other cases hold that legislation on the subject of inherent judicial power is merely declaratory and is not binding on the courts. (See Dale v. State, 198 Ind. 110.)

In a third class of cases the same result was achieved by construing the phrase "in the presence of the court or so near thereto", adopted from the federal statute, as applying to contempts by publication upon the theory that a widely circulated newspaper is constructively present in or near

to the court. (See People v. Wilson, 64 Ill. 195; Myers v. State, 46 Ohio St. 473.) Only in Pennsylvania, New York, Kentucky and (probably) South Carolina have the legislative limitations been respected (Ex parte Steinman, 95 Pa. St. 220; Rutherford v. Holmes, 5 Hun. 317, 319, affd. 66 N. Y. 367; Adams v. Gardner, 176 Ky. 252), but it is worthy of note that the courts of these states have become neither contemptible nor inefficient.

For some 75 years, the federal courts construed the congressional statute as a limitation upon their power to summarily punish for a constructive contempt. (Ex parte Poulson, [1835] supra; Ex parte Robinson, [1873] 19 Wall. 505, 510.) After 1900, moreover, there were indications that the requirement of physical proximity might be interpreted so as to include newspaper comment (Ex parte McLeod, [1903] 120 Fed. 130, 140; U. S. v. Huff, [1913] 206 Fed. 700, 704), but it was not until 1915 that the constructive presence doctrine was extended to contempts by publication. In that year the Toledo News-Bee published articles and cartoons which intimated that a United States district judge was biased in litigation pending between the city of Toledo and a traction company. The newspaper and its editor were adjudged guilty of contempt in a summary proceeding (U. S. v. Toledo Newspaper Co., 220 Fed. 458); and the judgment was sustained by the United States Supreme Court in Toledo Newspaper Co. v. U. S., 247 U. S. 402, Justices Holmes and Brandeis dissenting. Chief Justice White, who wrote the majority opinion, held that it was "essential to recall the situation existing at the time of the adoption of the Act of 1831 in order to elucidate its provisions", but his research apparently stopped with his own opinion written a year and a half earlier in Marshall v. Gordon, 243 U. S. 521, dealing with the power of congress to punish summarily for contempt. An analogy was drawn [fol. 157] between the powers of congress and the courts, and he asserted that each was based upon the "right of self preservation". This is the doctrine of "inherent necessity" in a new garb.

Regardless of the fact that judicial power had been limited by the Statute of 1831, the court had "no doubt that the provision conferred no power not already granted and imposed no limitations not already existing". This conclusion is palpably and demonstrably incorrect when considered in the light of the historical background in which

the federal statute was conceived. The federal courts, although by statute stripped of their power to punish contumacious editors, had transacted judicial business for almost a century without loss of either prestige or independence, yet Justice White said that freedom of the press "cannot be held to include the right virtually to destroy". The omission in the federal act of the tautological provision of the Pennsylvania act expressly abolishing contempts by publication, was considered by him to be "the strongest possible evidence of the purpose not to enact such provision". (For a searching criticism of the majority opinion, see Frankfurter and Landis: Power of Congress over Procedure in Criminal Contempts, 37 Harv. L. R. 1010.)

In California the first legislature expressly provided that the courts might punish for contempts. (Stats. 1850, chap. 33, sec. 13.) Under this statute the "power to punish in a summary manner, by fine or imprisonment, or either, for contempts offered to them while in session, or to any process, writ, rule, or order of said courts issued and made, or for disobeying any writ, process, or order thereof, or for obstructing or preventing the execution of the same, and the judgments, decrees, and determinations of said Courts in such cases shall be final and conclusive. * * *"

This statute was soon put to a test. Early in 1851 William Walker, the editor of the San Francisco "Herald", published an article referring to Judge Parsons with biting scorn. Also attacking the courts generally, the writer said: "They cover crime with the folds of the ermine; they lift their impotent arms to scourge an unfettered press with the rods of justice, as they style it. They drop the tears of a bastard mercy upon the robbers and the assassins who threaten our lives and our property; they turn with a scowl of wrath and an arm of vengeance upon the press which dares to complain of the tenderness with which offenders are treated."

Cited for contempt of court in summary proceedings, Walker was adjudged guilty, his punishment was fixed at a fine of five hundred dollars and he was ordered to stand committed until the same should be paid. In a written opinion Judge Parsons pointed out that the legislature had not defined "what shall or shall not be a contempt", and relying upon some statements of Chancellor Kent in People v. Freer, supra, he held that the power to punish summarily had existed in English and American courts "time out of

mind" and "is exercised * * * in all the states of the Union, unless a statute exists expressly taking away from the courts that power". (1 Cal. 542.)

Immediately upon his commitment, Walker memorialized the assembly of the legislature for the impeachment of Judge Parsons. A special committee submitted a report taking as precedents the Peck-Lawless and Respublica v. Oswald Cases and recommending impeachment. But the assembly refused to adopt the report, and appointed another special committee. The second committee found in early expressions of Chief Justice McKean of Pennsylvania and Chancellor Kent of New York, common law sanction for [fol. 158] the use of summary power and declared that section 13 of the District Court Act did not explicitly limit that power; hence "If there be fault anywhere, it is attributable to the obscurity of this section of the act, rather than to the interpretation put upon it by the court." The committee, therefore, concluded that Walker's charges "show no cause for impeachment" of Judge Parsons but was "induced to recommend the passage of a law, more explicitely defining contempts of court and the power of courts to punish them".

At the second session of the legislature, section 480 of the Practice Act was enacted. (Stats. 1851, chap. 5, tit. 13, p. 126.) In general, this section defined contempt of court as any misbehavior or breach of the peace in the presence of the court or its immediate vicinity which tends to interrupt the due course of trial or any disobediance of process. Section 1209 of the Code of Civil Procedure, enacted in 1872, adopted the Practice Act definition of contempt together with several additions to it. Official misconduct of judicial officers, abuse of process, acting as an officer of the court or attorney without authority or license, interference with jurors or witnesses, and disobedience of the order of a superior court by an inferior tribunal were brought within the summary power as was also "any other unlawful interference with the process or proceedings of a court". (Subd. 9.)

Not until 1890 did anyone challenge the application of this section to contempts by publication. At that time one Barry, who was editor of the San Francisco Weekly Star, published a particularly violent denunciation of Francis W. Lawler, a superior court judge, for sustaining a demurrer to a suit to oust a city supervisor from office. Barry was

found guilty of contempt in a summary proceeding before three other judges of the superior court. The Supreme Court denied his application for habeas corpus upon the ground that the editorial was an "unlawful interference with the proceedings of a court" within the meaning of subdivision 9 of section 1209 of the Code of Civil Procedure. (Ex parte Barry, 85 Cal. 603.)

Criticism of the decision soon appeared in several San Francisco newspapers. The Morning Call characterized the court as "accuser and judge" and argued that the accused should have been allowed a jury trial, as was then the practice of the federal courts in such cases. The San Francisco Evening Bulletin of September 13, 1890, stated in part, "The decision of the Supreme Court in the case of Editor Barry is exciting a great deal of unfavorable comment. Whether he libelled or not one of the Superior Judges cuts no figure in the case. The main fact is that he is to be punished without a hearing. * * *" In the San Francisco Chronicle of September 22, 1890, appeared an editorial which concluded: "All that can be done, if the Supreme Court adheres to its ruling in the Barry case, is to amend the statute by a negative clause, declaring that an attack upon the integrity of a judge made in the columns of a newspaper or other publication is not a contempt of court. If it come within the definition of a libel, the proprietor of the newspaper must stand the consequences. That is the responsibility which the Constitution and the law impose upon the newspaper, and which it cannot escape if it would; but to have its mouth closed thereafter, and to be precluded from making its defense before a jury, is not in harmony with either the spirit or the letter of the law, organic as well as statutory."

It is interesting to note that within a few months after this decision the legislature of 1891 amended section 1209 [fol. 159] of the Code of Civil Procedure by providing that "no speech or publication reflecting upon, or concerning any court, or any officer thereof, shall be treated or punished as a contempt of such court unless made in the immediate presence of such court while in session, and in such a manner as to actually interfere with its proceedings". But this restriction upon the judicial power was soon declared unconstitutional. (In re Shortridge, 99 Cal. 526, 532.) The inherent necessity doctrine, said Justice Paterson, is "founded upon the principle—which is coeval with the exist-

ence of the courts, and as necessary to the right of self-protection—that it is a necessary incident to the execution of the powers conferred upon the court, and is necessary to maintain its dignity, if not its very existence". Admitting that the legislature had the right "to regulate the procedure and enlarge the power", the court also held that it could not "without trenching upon the constitutional powers of the court and destroying the autonomy of that system of checks and balances, which is one of the chief features of our triple department form of government, fetter the power itself".

To support the court's conclusions it cited only the Arkansas case of State v. Morrill, supra, which was said to be "in line with all of the authorities". But aside from the lack of precedent for the decision, it is entitled to no consideration in defining the law of contempt because the judgment against the offending editor was set aside upon the ground that, considering all of the facts, "the publication could not, under any circumstances, constitute a contempt". Yet in People v. Durrant, 116 Cal. 179, 209, it was cited for the obiter statement that a publication calculated to influence a decision is punishable as a contempt. Also the same dictum was quoted in Lamberson v. Super. Ct., 151 Cal. 458, 461; Paddon v. Super. Ct., 65 Cal. App. 34; and In re Mason, 69 Cal. App. 598, but in each of these cases the petitioner was charged with a direct contempt and no question concerning the constitutionality of that portion of section 1209 of the Code of Civil Procedure relating to contempts by publication was properly before the court. In the Lamberson case, the petitioner had filed a contumacious affidavit charging a judge with bias and lack of integrity. This, the court held, was a contempt committed in the presence of the court. The acts complained of in the Paddon and Mason cases were contempts of the same character, and were spoken of as having been done "in the face of the court". In the former, the petitioner refused to obey a subpoena and filed an affidavit in court stating his refusal; the contemner in the Mason case violated a court order.

In McClatchy v. Superior Court, 119 Cal. 413, it appears that the court was of the opinion that a false report of pending litigation was punishable as a contempt, but the order committing the alleged contemner was annulled upon the ground that he had not been given a fair hearing. However, In re Lindsley, 75 Cal. App. 122, and Lindsley v. Superior

Court, 76 Cal. App. 419, each hold that the publication of newspaper comment on pending litigation is a contempt of court punishable in a summary proceeding, although the question of the validity or applicability of subdivision 13 of section 1209 of the Code of Civil Procedure does not appear to have been raised and it was not discussed in either opinion. The first case cites 13 C. J. 34 to the effect that "it is a contempt to issue publications which are calculated to prejudice or prevent fair and impartial action in a cause [fol. 160] of judicial investigation then pending". The second case, which arose out of the same proceeding in the superior court, holds that a contempt under subdivision 9 of section 1209 was sufficiently proved.

The dictum of In re Shortridge, supra, was again quoted in Blodgett v. Superior Court, 210 Cal. 1, which is another case where the facts show that there was a direct contempt. In re Hallinan, 126 Cal. App. 121, is in the same category. The Shortridge case was there relied upon to sustain the trial court's power to punish an attorney who was guilty of disorderly conduct during the course of a trial.

In Ex parte Shuler, 210 Cal. 377, 397, and In re San Francisco Chronicle, 1 Cal. (2d) 630, this court for the first time directly held that the limitation upon the power of the courts to punish contemners by publication is unconstitutional. Little consideration was given to the subject in either opinion, the court relying entirely upon the dictum in the Shortridge case and the intervening cases which cited that case or quoted from it. However, mere reiterations of the doctrines of "inherent necessity" and "immemorial usage" are not authority for their validity.

The notion that contumacious publications have been subject to the summary power from time immemorial has been shown to be historically incorrect. Also, the experience of Pennsylvania and other jurisdictions where immunity of the press has long been maintained conclusively proves that no such power is necessary to maintain either the existence of or the respect for courts. It is not necessary to the wholesome administration of justice in this state that judicial officers have uncontrolled discretion in passing upon alleged constructive contempts of court. The opportunity for arbitrary punishment often provides the occasion for it. Noise, interruptions, violence of any kind in the course of judicial proceedings must be repressed, obedience to all lawful orders must be enforced. To uphold its authority

when challenged by such affronts to the judicial procedure, a court may and should summarily punish the offender. But indirect contempts, particularly publications in a newspaper, are entirely different in their nature and consequences.

The rights of freedom of speech and of the press have their roots deep in the soil of this nation's organic law. Five days before the Declaration of Independence was proclaimed, the patriots of Virginia declared in their Constitution: "Freedom of the press is the great bulwark of all liberty. None but a despotic government would attempt to restrain it. If it be restrained all liberty fails." For more than a century and a half our nation has consistently upheld this right of expression by a free people as a vital principle which the founders of our national and state governments stated in the respective constitutions as necessary to a democracy.

"Congress shall make no law . . . abridging the freedom of the press." (Art. I, U. S. Const.) The positive scope of this guarantee was stated by Mr. Justice Harlan in the celebrated case of Patterson v. Colorado, 205 U. S. 454,) as follows: "I go further and hold that the privileges of free speech and of a free press, belonging to every citizen of the United States, constitute essential parts of every man's liberty * * * It is, I think, impossible to conceive of liberty, as secured by the Constitution against hostile action, whether by the nation or by the states, which does not embrace the right to enjoy free speech and the [fols. 161-182] right to have a free press." Similarly our state Constitution ordains that "Every citizen may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press." (Art. I, sec. 9, Calif. Const.)

These provisions are binding upon the courts and no claims of judicial necessity can outweigh them. When free speech is fettered, liberty is a meaningless word.

The judgment should be annulled.

Edmonds, J.

[fol. 183] IN SUPREME COURT OF CALIFORNIA

Bank

San Francisco No. 16174

HARRY R. BRIDGES, Petitioner,

vs.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES, Respondent

On Review from the Superior Court in and for the County of Los Angeles

JUDGMENT—October 16, 1939

The above entitled cause having been heretofore fully argued, and submitted and taken under advisement, and all and singular the law and premises having been full considered, it is ordered, adjudged, and decreed by the Court that the Judgment of the Superior Court in and for the County of Los Angeles in the above entitled cause, be and the same is hereby affirmed.

I, B. Grant Taylor, Clerk of the Supreme Court of the State of California, do hereby certify that the foregoing is a true copy of an original judgment entered in the above entitled cause on the 16th day of October, 1939, and now remaining of record in my office.

Witness my hand and the seal of the Court, affixed at my office, this 24th day of November, A. D. 1939.

B. Grant Taylor, Clerk. By I. M. Johnson, Deputy.
(Seal) 11800.

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[fol. 184] IN SUPREME COURT OF CALIFORNIA

In Bank

[Title omitted]

ORDER DENYING PETITION FOR REHEARING—Filed Nov. 13, 1939

By the Court

The Petition for a rehearing herein is denied. Edmonds, J., Curtis, J., and Gibson, J. voting for a rehearing.

Dated: November 9, 1939.

(Sig.) Waste, Chief Justice.

[File endorsement omitted.]

[fols. 185-186] Clerk's Certificate to foregoing transcript omitted in printing.

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[fols. 187-188] In Supreme Court of The United States

Order Extending Time Within Which To Apply For Writ of Certiorari

On consideration of the motion of counsel for petitioner in the above entitled cause, and good cause therefor having been shown,

It is Now Here Ordered that the time within which Petition for Writ of Certiorari may be filed herein be, and the same is hereby extended for a period of 15 days from this date.

Stanley Reed, Associate Justice of the Supreme Court of the United States.

Dated this 9th day of February, 1940.

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[fol. 189] In Supreme Court of The United States

Stipulation Re Printing Record Under Rule Thirty-eight (8), United States Supreme Court Rules—Filed February 20, 1940

It is Hereby Stipulated that the following may be omitted from the printed record:*

1. Petition for Writ of Review in Supreme Court of the State of California, including Pages I to XIII, and including Pages 1 to 37 thereof.

2. The following from affidavit of J. Louis Elkins, being Exhibit "A" attached to said Petition for Review:

(a) "First Count," being page 1, line 13, to page 4, line 20, of said Exhibit;

(b) "Third Count," being page 10, line 14, to page 14, line 14, of said Exhibit;

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* All page references herein are to the typewritten Transcript.

[fol. 190] 3. Affidavit of A. G. Stanham and Exhibit attached thereto, said Exhibit being an affidavit of H. R. Bridges, both said affidavit of A. G. Stanham and said Exhibit being pages 57 to 73, inclusive, of Exhibit "A" attached to said Petition for Review.

4. The following from "Demurrer," being Exhibit "D":

(a) Page 1, line 15, to page 2, line 9;
(b) Page 2, line 21, to page 8, line 1;
(c) Page 8, line 6, to page 10, line 12.

5. Memo Opinion and Order attached to Petition for Review, being Exhibit "E" thereto; pages 1 to 24, inclusive.

6. The following from Answer of Harry R. Bridges, Exhibit "F", attached to said Petition, page 3, line 12, to page 5, line 26.

7. Exhibit "K".

8. Exhibit "L".

9. Verification to Petition, being page 195 of the Petition.

10. Memo of Points and Authorities, being page 196 to page 219, attached to said Petition.

It is Further Stipulated that in the event People's "Pro-Exhibit 1" and "Pro-Exhibit 2", attached to the Stipulation Amending Transcript is printed, only those portions thereof, as follows, shall be printed:

"Pro-Exhibit 1": that portion under the caption, "I. [fol. 191] L. A. files a suit on I. L. W. U. over Work".

"Pro-Exhibit 2": those portions under caption "Bridges Says Court Action Means Tie-up", consisting of two columns, up to the point in the second column reading, "John Barrymore to Play King Louis XV".

Dated this 15th day of February, 1940, at Los Angeles, California.

Gallagher, Wirin & Johnson; Gladstein, Grossman & Margolis; and Charles J. Katz, By A. L. Wirin, Attorneys for Petitioner.

J. H. O'Connor, County Counsel; Douglas De Coster, Chief Deputy County Counsel; S. V. O. Prichard, Deputy County Counsel; Allen W. Ashburn, Michael G. Luddy, and Arnold Praeger; by Michael G. Luddy, Attorneys for Respondent.

[fol. 192] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed April 8, 1940

The petition herein for a writ of certiorari to the Supreme Court of the State of California is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.